रजिस्ट्री सं. डी. एल. (एन) 04/0007/2003–05 REGD. NO. D. L. (N) 04/0007/2003—05

भारत का राजपत्र
The Gazette of India

प्राधिकार से प्रकाशित
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WEEKLY

सं. 22] नई दिल्ली, मई 25—मई 31, 2014, शनिवार/ज्येष्ठ 4—ज्येष्ठ 10, 1936
No. 22] NEW DELHI, MAY 25—MAY 31, 2014, SATURDAY/JYAISTHA 4—JYAISTHA 10, 1936

भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India (Other than the Ministry of Defence)

विद्युत मंत्रालय

नई दिल्ली, 26 मई, 2014

का.आ. 1573.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप नियम (4) के अनुसरण में विद्युत मंत्रालय के प्रशासनिक नियंत्रणाधीन रुरल इलेक्ट्रीफिकेशन कारपोरेशन लिमिटेड के निम्नलिखित कार्यालयों को, जिसके 80 प्रतिशत कर्मचारीवृंद ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, एतद्द्वारा अधिसूचित करती है:-

(i) रूरल इलेक्ट्रीफिकेशन कारपोरेशन लिमिटेड,
परियोजना कार्यालय, ओमश्री इन्कलेव,
प्रथम तल (लोयोला स्कूल के पीछे)
एयरपोर्ट रोड, हिनू, पो.ऑ. डोरंडा,
रांची-834002, झारखण्ड

(ii) रूरल इलेक्ट्रीफिकेशन कारपोरेशन लिमिटेड,
उप कार्यालय, 7-न्यू रोड,
अपोजिट एम.के.पी. कॉलेज,
देहरादून-248001

[सं. 11017/10/2013-हिंदी]
सतीश कुमार, संयुक्त सचिव

MINISTRY OF POWER

New Delhi, the 26th May, 2014

S.O. 1573.—In pursuance of Sub Rule (4) of Rule 10 of the Official Language (use for official purpose of the union) Rules, 1976, the Central Government hereby notify the following offices of the Rural Electrification Corporation Limited under the administrative control of Ministry of Power, where 80% of the staff have acquired working knowledge of Hindi-

(i) Rural Electrification Corporation Limited,
Project office, Om Shree Enclave,
1st Floor (Beside Loyola School),
Airport Road, Hinoo, P.O. Doranda,
Ranchi-834002, Jharkhand.

(ii) Rural Electrification Corporation Limited,
Sub-Office, 7 New Road, Opposite,
M.K.P. College, Dehradun-248001

[No. 11017/10/2013-Hindi]

SATISH KUMAR, Jt. Secy.

उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय

(उपभोक्ता मामले विभाग)

(भारतीय मानक ब्यूरो)

नई दिल्ली, 16 मई, 2014

का.आ. 1574.—भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिए गए हैं वे स्थापित हो गये हैं।

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक(कों) की संख्या, वर्ष और शीर्षक	स्थापित तिथि	भारतीय मानक(कों) जो कि रद्द होने हैं, अगर है, कि संख्या, वर्ष और शीर्षक	रद्द होने की तिथि
(1)	(2)	(3)	(4)	(5)
1.	आई एस 1448 [पी: 16]: 2014 पेट्रोलियम एवं इसके उत्पादों की परीक्षण पद्वतियॉ [पी: 16] कच्चे और पेट्रोलियम उत्पाद-प्रयोगशाला में द्यनत्व ज्ञात करना-उत्प्लव द्यनत्वमापी पद्वति (चौथा पुनरीक्षण)	16 मई, 2014	IS 1448 [P : 16] : 1990 (Third Revision)	16 मई, 2014
2.	आई एस 3400 (भाग 2) : 2014 वल्कनीकृत रबड़ की परीक्षण पद्वतियॉ भाग 2 रबड़ वल्कनीकृत या थर्मोप्लास्टिक-कठोरता ज्ञात करना (10 आईआर एचडी तथा 100 आईआर एचडी के बीच कठोरता (चौथा पुनरीक्षण)	16 मई, 2014	IS 3400 (Part 2) : 2003/ISO 48 : 1994 (Third Revision)	16 मई, 2014
3.	आई एस 3400 (भाग 9) :2014 वल्कनीकृत रबड़ की परीक्षण पद्वतियॉ भाग 9 रबड़ वल्कनीकृत या थर्मोप्लास्टिक-द्यनत्व ज्ञात करना (तीसरा पुनरीक्षण)	16 मई, 2014	IS 3400 (Part 9) : 2003/ISO 2781 : 1988 (Second Revision)	16 मई, 2014
4.	आई एस 12656 : 2014 रबड़ या प्लास्टिक होज एवं टयूबिंग बैंडिग परीक्षण (पहला पुनरीक्षण)	16 मई, 2014	IS 12656 : 1989/ISO 1746 : 1983 (First Revision)	16 मई, 2014
5.	आई एस 12657 : 2014 रबड़ एवं प्लास्टिक होज-सब-एम्बीएन्ट तापमान नम्यता परीक्षण (पहला पुनरीक्षण)	16 मई, 2014	IS 12657 : 1989/ISO 4672 : 1988 Rubber and Plastics Houses-Sub-Ambient Temperature Flexibility Tests	16 मई, 2014
6.	आई एस /आई एस ओ 15189 : 2012 चिकित्सा प्रयोगशालाएँ- गुणता और विश्वसनीयता के लिए आवश्यकताएँ (दूसरा पुनरीक्षण)	16 मई, 2014	_ _	_ _
7.	आई एस 16204 : 2014 रबड़ एवं प्लास्टिक होज एवं होज एसेम्बली - शब्दावली	16 मई, 2014	_ _	_ _
8.	आई एस 16209 : 2014 रबड़ एवं प्लास्टिक होज एवं होज एसेम्बली - निर्वात प्रतिरोधकता ज्ञात करना	16 मई, 2014	_ _	_ _
9.	आई एस 16210 : 2014 रबड़ एवं प्लास्टिक होज एवं होज एसेम्बली - चयन, भंडारण, प्रयोग तथा अनुरक्षण हेतु मार्गदर्शिका	16 मई, 2014	_ _	_ _

इस भारतीय मानक की प्रतियां भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुरशाह जफर मार्ग, नई दिल्ली 110002 क्षेत्रीय कार्यालयों: नई दिल्ली, कोलकता, चण्डीगढ़, चेन्नई, मुम्बई, तथा शाखा कार्यालयों: अहमदाबाद, बंगलौर, भोपाल, भूवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरूवनन्तापुरम में बिक्री हेतु उपलब्ध हैं। भारतीय मानकों को http://www.standardsbis.in द्वारा इंटरनैट पर खरीदा जा सकता है।

[संदर्भ: पीयूबी/जीएन-1/V-II]

कला एम वरियर, निदेशक (विदेशी भाषा एवं प्रकाशन)

MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION

(Department of Consumer Affairs)

(BUREAU OF INDIAN STANDARDS)

New Delhi, the 16th May, 2014

S.O. 1574.—In pursuance of Clause (b) of sub-rule (1) of Rules 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the second column of Schedule hereto annexed has been established on the date indicated against it in third columan. The particulars of the standards, if any, which are given in the fourth column shall also remain in force concurrently till they are cancelled on the date indicated against them in the fifth column.

SCHEDULE

Sl. No.	No. & Year of the Indian Standards Established	Date of Establishment	No. & Year of the Indian Standards to be cancelled, if any	Date of cancellation
(1)	(2)	(3)	(4)	(5)
1.	IS 1448 [P : 16] : 2014 ISO 3675 : 1998 Methods of test for petroleum and its Products [P : 16] Crude petroleum and liquid petroleum products-laboratory determination of density-Hydrometer method (Fourth Revision)	16 May 2014	IS 1448 [P : 16] : 1990 (Third Revision)	16 May 2014
2.	IS 3400 (Part 2) : 2014/ISO 48 : 2010 Methods of test for vulcanized rubber Part 2 Rubbber, Vulcanized or thermoplastic-Determination of hardness (Hardness between 10 IRHD and 100 IRHD (Fourth Revision)	16 May 2014	IS 3400 (Part 2) : 2003/ISO 48 : 1994 (Fourth Revision)	16 May 2014
3.	IS 3400 (Part 9) : 2014/ISO 2781 : 2008 Methods of test for vulcanized rubber Part 9 Rubbber, Vulcanized or thermoplastic-Determination of density (Third Revision)	16 May 2014	IS 3400 (Part 9) : 2003/ISO 2781 : 1988 (Second Revision)	16 May 2014
4.	IS 12656 : 2014/ISO 10619-1 : 2011 rubber or Plastic Hoses and Tubing-Bending Tests (First Revision)	16 May 2014	IS 12656 : 1989/ISO 1746 : 1983	16 May 2014
5.	IS 12657 : 2014/ISO 10619-2 : 2011 rubber or Plastic Hoses - Sub-Ambient Temperature Flexibility test (First Revision)	16 May 2014	IS 12657 : 1989/ISO 4672 : 1988	16 May 2014
6.	IS /ISO 15189 : 2012 Medical Laboratories-Requirements for Quality and Competence (Second Revision)	16 May 2014	_ _	_ _
7.	IS 16204 : 2014/ISO 8330 : 2007 Rubber and Plastics Hoses and Hose Assemblies-Vocabulary	16 May 2014	_ _	_ _
8.	IS 16209 : 2014/ISO 7233 : 2006 Rubber and Plastics Hoses and Hose Assemblies-Determination of Resistance to Vacuum	16 May 2014	_ _	_ _
9.	IS 16210 : 2014/ISO 8331 : 2007 Rubber and Plastics Hoses and Hose Assemblies-Guidelines for Selection Storage, use and Maintenance	16 May 2014	_ _	_ _

Copies of these standards are available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices : Kolkatta, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Kochi.

[Ref : PUB/GN-1/V-II]

KALA M. VARIAR, Director (Foreign Languages & Publication)

नई दिल्ली, 19 मई, 2014

का.आ. 1575.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 (1987 में यथासंशोधित) के नियम 10 के उप नियम (4) के अनुसरण में उपभोक्ता मामले विभाग के निम्नलिखित कार्यालय में हिन्दी का कार्यसाधक ज्ञान रखने वाले कर्मचारियों की संख्या 80% से अधिक हो जाने के परिणामस्वप उसे एतद्द्वारा अधिसूचित करती है:-

1. भारतीय विधिक माप विज्ञान संस्थान, कांके, रांची-834006

[सं. ई-11012/2/2014-हिन्दी]

चन्द्रलेखा मालवीय, वरिष्ठ आर्थिक सलाहकार

New Delhi, the 19th May, 2014

S.O. 1575.—In pursuance of Sub Rule (4) of Rule 10 of the Official Language (use for Official Purposes of the Union) Rules, 1976 (as amended in 1987) the Central Government hereby notifies the following office of the Department of Consumer Affairs wherein the percentage of the staff having working knowledge of Hindi has gone above 80% :

1. Indian Institute of Legal Metrology, Kanke, Ranchi-834006.

[No. E-11012/2/2014-Hindi]

CHANDRALEKHA MALVIYA, Senior Economic Adviser

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 28 मई, 2014

का.आ. 1576.—केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाईन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 2 के खंड (क) के अनुसरण में उक्त अधिनियम के अधीन महाराष्ट्र राज्य के भीतर गेल (इण्डिया) लिमिटेड की सभी पाइपलाईनों के लिये सक्षम अधिकारी के कार्यों का निर्वहन करने के लिये श्रीमती मीनाक्षी सिंह, संयुक्त कलेक्टर, मध्यप्रदेश सरकार, को दिनांक 07-05-2014 से प्राधिकृत करती है ।

[सं. एल-14014/28/14-जी.पी]
एस.पी. अग्रवाल, अवर सचिव

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 28th May, 2014

S.O. 1576.—In pursuance of clause (a) of Section 2 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), Central Government hereby authories Smt. Meenakshi Singh, Joint Collector, Madhya Pradesh Govt. to perform the functions of Competent Authority for all pipelines of GAIL (India) Limited, under the said Act, within the territory of Maharashtra w.e.f. 07-05-2014.

[No. L-14014/28/14-GP.]
S.P. AGARWAL, Under Secy.

कोयला मंत्रालय

नई दिल्ली, 20 मई, 2014

का.आ. 1577.—केन्द्रीय सरकार को यह प्रतीत होता है कि इससे उपाबद्ध अनुसूची में उल्लिखित परिक्षेत्र की भूमि में कोयला अभिप्राप्त होने की संभावना है;

और रेखांक संख्या एसईसीएल/बीएसपी/जीएम(पीएलजी)/भूमि/454, तारीख 13 फरवरी, 2014 का जिसमें पूर्वोक्त अनुसूची में वर्णित भूमि क्षेत्र के ब्यौरे अन्तर्विष्ट है, निरीक्षण कलेक्टर, जिला-अनुपपुर (मध्य प्रदेश) के कार्यालय में या कोयला नियंत्रक, 1, काउंसिल हाऊस स्ट्रीट, कोलकाता- 700001 के कार्यालय में या साऊथ ईस्टर्न कोलफील्ड्स लिमिटेड (राजस्व अनुभाग), सीपत रोड, बिलासपुर-495006 (छत्तीसगढ़) के कार्यालय में किया जा सकता है;

अत:, अब, केन्द्रीय सरकार, कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 4 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, अनुसूची में वर्णित भूमि में कोयले का पूर्वेक्षण करने के अपने आशय की सूचना देती है;

उपरोक्त अनुसूची में वर्णित भूमि में हितबद्ध कोई व्यक्ति, इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से नब्बे दिन की अवधि के भीतर भारसाधक अधिकारी या विभागाध्यक्ष (राजस्व), साऊथ ईस्टर्न कोलफील्ड्स लिमिटेड, सीपत रोड, बिलासपुर-495006 (छत्तीसगढ़) से-

(i) उक्त अधिसूचना की धारा 4 की उप धारा (3) के अधीन की गई किसी कार्रवाई से हुई या सम्भवत: होने वाली किसी क्षति के लिये उक्त अधिनियम की धारा 6 के अधीन प्रतिकर का दावा कर सकेगा; या

(ii) उक्त अधिनियम की धारा 13 की उपधारा (1) के अधीन पूर्वेक्षण अनुज्ञप्तियों के प्रभावहीन होने के संबंध में या उक्त अधिनियम की धारा 13 की उप-धारा (4) के अधीन खनन पट्टे प्रभावहीन होने के लिये प्रतिकर का दावा कर सकेगा और उसे उक्त अधिनियम की धारा 13 की उपधारा (1) के खंड (i) से खंड (iv) में विनिर्दिष्ट मदों की बाबत उपगत व्यय को उपदर्शित करने के लिए पूर्वोक्त भूमि से संबंधित सभी मानचित्रों, चार्टों और अन्य दस्तावेजों को परिदत्त कर सकेगा।

अनुसूची

केवई ब्लाक, हसदेव क्षेत्र

जिला-अनुपपुर, मध्य प्रदेश

(रेखांक संख्या एसईसीएल/बीएसपी/जीएम(पीएलजी)/भूमि/454, तारीख 13 फरवरी, 2014)

(पूर्वेक्षण के लिए अधिसूचित भूमि दर्शाते हुए)

क्रम सं.	ग्राम का नाम	पटवारी हल्का नम्बर	तहसील	जिला	क्षेत्र हेक्टर में (लगभग)	टिप्पणियां
1.	पथरौडी	140	कोतमा	अनुपपुर	700.000	भाग
2.	बसखला	19	कोतमा	अनुपपुर	50.000	भाग
3.	महारी	139	कोतमा	अनुपपुर	20.000	भाग
4.	बसखली	138	कोतमा	अनुपपुर	30.000	भाग
				कुल : 800.000 हेक्टर (लगभग) या 1976.80 एकड़ (लगभग)		

सीमा वर्णन:

क-ख रेखा ग्राम बसखली और महारी के सम्मिलित सीमा में बिन्दु 'क' से आरंभ होती है और ग्राम बसखली के पूर्वी भाग, ग्राम पथरौडी के उत्तरी सीमा से होती हुई बिन्दु 'ख' पर मिलती है।

ख-ग रेखा बिन्दु 'ख' से आरंभ होती है और ग्राम पथरौडी के पूर्वी सीमा से होती हुई बिन्दु 'ग' पर मिलती है।

ग-घ रेखा बिन्दु 'ग' से आरंभ होती है और ग्राम पथरौडी के दक्षिणी भाग से होती हुई ग्राम पथरौडी-बसखला के सम्मिलित सीमा में बिन्दु 'घ' पर मिलती है।

घ-क रेखा बिन्दु 'घ' से आरंभ होती है और ग्राम बसखला, महारी के पूर्वी भाग से होती हुई आरंभिक बिन्दु 'क' पर मिलती है।

[सं. 43015/03/2014-पी.आर.आई.डब्ल्यू.-I]

एम.के. शर्मा, निदेशक

MINISTRY OF COAL

New Delhi, the 20th May, 2014

S.O. 1577.—Whereas it appears to the Central Government that Coal is likely to be obtained from the lands in the locality mentioned in the Schedule annexed hereto;

And whereas, the plan bearing number SECL/BSP/GM(PLG)/Land/454, dated the 13th February, 2014 containing details of the area of land described in the aforesaid Schedule may be inpected at the office of the Collector, District-Anuppur (Madhya Pradesh) or at the office of the Coal Controller, 1, Council House Street, Kolkata-700001 or at the office of the South Eastern Coalfields Limited (Revenue Section), Seepat Road, Bilaspur- 495006 (Chhattisgarh);

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 4 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957), (hereinafter referred to as the said Act), the Central Government hereby gives notice of its intention to prospect for coal in the land described in the Schedule;

Any person interested in the land described in the above mentioned Schedule may-

(i) Claim compensation under section 6 of the said Act for any damage caused or likely to be caused by any action taken under sub section 3 of section 4 thereof; or

(ii) Claim compensation under sub-section (1) of section 13 of the said Act, in respect of prospecting licence ceasing to have effect or under sub-section (4) of section 13 of the said Act for mining lease ceasing to have effect and deliver all maps, charts and other documents relating to the aforesaid land to show the expenditure incurred in respect of items specified in clauses (i) to (iv) of sub section (1) of section 13 of the said Act,

to the Officer-in-Charge or Head of the Department (Revenue), South Eastern Coalifields Limited, Seepat Road, Bilaspur-495006 (Chhattishgarh) within a period of ninety days from the date or publication of this notification in the Official Gazette.

SCHEDULE

Kewai Block, Hasdeo Area
District-Anuppur, Madhya Pradesh

[Plan bearing number SECL/BSP/GM (PLG)/Land/454, dated the 13th February, 2014]

(showing the land notificed for prospecting).

Sl. no.	Name of Village	Patwari halka number	Tahsil	District	Area in hectares (approximately)	Remarks
1.	Pathrodi	140	Kotma	Anuppur	700.000	Part
2.	Baskhala	19	Kotma	Anuppur	50.000	Part
3.	Mouhari	139	Kotma	Anuppur	20.000	Part
4.	Baskhali	138	Kotma	Anuppur	30.000	Part
					Total:- 800.000 hectares (approximately) or 1976.80 acres (Approximately)	

BOUNDARY DESCRIPTION :

A-B Line starts from point 'A' on the common boundary of villages Baskhali and Mouhari and passes through eastern part of village Bhagta, along northern boundary of village Pathrodi and meets at point 'B'.

B-C Line starts from point 'B' and passes along eastern boundary of village Pathrodi and meets at point 'C'.

C-D Line starts from point 'C' and passes through southern part of village Pathrodi and meets at point 'D' on the common boundary of villages Pathrodi-Baskhala.

D-A Line starts from point 'D' and passes through eastern part of village Baskhala, Mouhari and meets at starting point 'A'.

[No. 43015/03/2014-PRIW-I]

M.K. SHARMA, Director

नई दिल्ली, 27 मई, 2014

का.आ. 1578.—केन्द्रीय सरकार ने कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 4 की उपधारा (1) के अधीन भारत सरकार में कोयला मंत्रालय के द्वारा जारी की गई अधिसूचना संख्या का.आ. 2014 तारीख 20 सितम्बर, 2013 जो भारत के राजपत्र के भाग II, खंड 3, उपखंड (ii), तारीख 28 सितम्बर, 2013 में प्रकाशित की गई थी, उस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट परिक्षेत्र की भूमि में जिसका माप 1066.002 हेक्टर (लगभग) या 2634.09 एकड़ (लगभग) है, कोयले का पूर्वेक्षण करने के अपने आशय की सूचना दी थी;

और केन्द्रीय सरकार को यह समाधान हो गया है कि इस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट उक्त भूमि में किसी भाग में कोयला अभिप्राप्य है।

अत: केन्द्रीय सरकार, उक्त अधिनियम की धारा 7 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए इससे संलग्न अनुसूची में वर्णित 1020.492 हेक्टर या 2521.63 एकड़ माप की उक्त भूमि में या उस पर के सभी अधिकारों के अर्जन करने के अपने आशय की सूचना देती है:

टिप्पण 1: इस अधिसूचना के अधीन आने वाले क्षेत्र के रेखांक संख्या एसईसीएल/बीएसपी/जीएम/पीएलजी/भूमि/ 453, तारीख 13 जनवरी, 2014 का निरीक्षण कलेक्टर, उमरिया (मध्य प्रदेश) के कार्यालय में या कोयला नियंत्रक,1, काउंसिल हाउस स्ट्रीट, कोलकाता-700001 के कार्यालय में या साउथ ईस्टर्न कोलफील्ड्स लिमिटेड (राजस्व अनुभाग), सीपत रोड, बिलासपुर-495006, छत्तीसगढ़ के कार्यालय में किया जा सकता है।

टिप्पण 2: उक्त अधिनियम की धारा 8 के उपबंधों की ओर ध्यान आकृष्ट किया जाता है, जिसमें निम्नलिखित उपबंध है:-

अर्जन के बाबत् आपत्तियॉ:

"8 (1) कोई व्यक्ति जो किसी भूमि में जिसकी बाबत् धारा 7(1) के अधीन अधिसूचना निकाली गई है, हितबद्ध है, अधिसूचना के निकाले जाने से तीस दिन के भीतर सम्पूर्ण भूमि या उसके किसी भाग या ऐसी भूमि में या उस पर के किन्हीं अधिकारों का अर्जन किए जाने के बारे में आपत्ति कर सकेगा।

स्पष्टीकरण:

(1) इस धारा के अन्तर्गत यह आपत्ति नहीं मानी जाएगी कि कोई व्यक्ति किसी भूमि में कोयला उत्पादन के लिए स्वंय खनन संक्रियाएं करना चाहता है और ऐसी संक्रियाएं केन्द्रीय सरकार या किसी अन्य व्यक्ति को नहीं करनी चाहिए।

(2) धारा 8 की उपधारा (1) के अधीन प्रत्येक आपत्ति सक्षम अधिकारी को लिखित रूप में की जाएगी और सक्षम अधिकारी, आपत्तिकर्ता को स्वयं सुने जाने, विधि व्यवसायी द्वारा सुनवाई का अवसर देगा और ऐसी सभी आपत्तियों को सुनने के पश्चात् और ऐसी अतिरिक्त जॉच, यदि कोई हो, करने के पश्चात, जो वह आवश्यक समझता है, वह या तो धारा 7 की उपधारा (1) के अधीन अधिसूचित भूमि का या ऐसी भूमि में या उस पर के अधिकारों के संबंध में एक रिपोर्ट या ऐसी भूमि के विभिन्न टुकड़े या ऐसी भूमि में या उस पर के अधिकारों के संबंध में आपत्तियों पर अपनी सिफारिशों और उसके द्वारा की गई कार्यवाही के अभिलेख सहित विभिन्न रिपोर्ट केन्द्रीय सरकार को उसके विनिश्चय के लिए देगा।

(3) इस धारा के प्रयोजनों के लिए वह व्यक्ति किसी भूमि में हितबद्ध समझा जाएगा जो प्रतिकर में हित का दावा करने का हकदार होगा, यदि भूमि या किसी ऐसी भूमि में या उस पर के अधिकार इस अधिनियम के अधीन अर्जित कर लिए जाते है।"

टिप्पण 3 : केंद्रीय सरकार द्वारा, भारत के राजपत्र, भाग II, धारा 3, उपधारा (ii), तारीख 4 अप्रैल, 1987 में प्रकाशित अधिसूचना संख्यांक का.आ. 905, तारीख 20 मार्च, 1987 द्वारा कोयला नियंत्रक, 1, काउंसिल हाउस स्ट्रीट, कोलकाता-700001 को उक्त अधिनियम की धारा 3 के अधीन सक्षम प्राधिकारी नियुक्त किया जाता है।

अनुसूची

मालाचुआ ब्लाक, जोहिला क्षेत्र

जिला उमरिया, मध्य प्रदेश

(रेखांक संख्यांक-एसईसीएल/बीएसपी/जीएम/पीएलजी/भूमि/453, तारीख 13 जनवरी, 2014)

सभी अधिकार:

(क) राजस्व भूमि:

क्रम सं.	ग्राम का नाम	पटवारी हल्का संख्यांक	जनरल संख्यांक	तहसील	जिला	क्षेत्र हेक्टर में	टिप्पण
1.	औढेरा	40	39	पाली	उमरिया	291.946	भाग
2.	मालाचुआ	41	852	पाली	उमरिया	444.967	भाग
3.	ब्लाक पडरी	42	752	पाली	उमरिया	97.509	भाग
					कुल : 834.422 हेक्टर (लगभग) या 2061.85 एकड़ (लगभग)		

(ख) वन भूमि:

क्रम सं.	कम्पार्टमेंट संख्या	रेन्ज	संभाग	वन का प्रकार	ब्लाक	क्षेत्र हेक्टर में	टिप्पण
1.	223,225,229 230	घुनघुटी	उमरिया	आरक्षित वन	सोहागपुर	186.070	भाग
					कुल : 186.070 हेक्टर (लगभग) या 459.78 एकड़ (लगभग)		

महा जोड़ (क+ख) : 1020.492 हेक्टर (लगभग) या 2521.63 एकड़ (लगभग)

1. ग्राम औढेरा (भाग) में अर्जित किए जाने वाले प्लाट संख्यांक:

38(भाग), 39(भाग), 40 से 44, 45(भाग), 47, 48(भाग), 50(भाग), 54(भाग), 55, 56(भाग), 61(भाग), 62(भाग), 63 से 71, 72(भाग), से 75(भाग), 103(भाग), 113(भाग), 114(भाग), 115(भाग), 116, 117, 118(भाग), 119 से 141, 142(भाग), 145(भाग), 146(भाग), 147 से 169, 170(भाग), 183(भाग), 204(भाग), 205, 206(भाग), 208(भाग), 219, 220(भाग), 221(भाग),, 222 से 246, 247(भाग), 248(भाग), 249 से 409, 72/410 ।

2. ग्राम मालाचुआ (भाग) में अर्जित किए जाने वाले प्लाट संख्यांक :

1(भाग), 2(भाग), 5(भाग), 6, 7, 8(भाग), 9 से 16, 17(भाग), 18(भाग), 47(भाग), 48 से 50, 51(भाग), से 53(भाग), 54 से 64, 65(भाग), 66(भाग), 70(भाग), 102(भाग), 104(भाग), 105 से 610, 611(भाग), से 613(भाग), 617(भाग), 618(भाग), 619 से 635, 636(भाग), 638(भाग), से 641(भाग), 642, 643(भाग), 644, 645(भाग), 656(भाग), 659(भाग), 15/669, 236/666(भाग), 538/664, 445/668 ।

3. ग्राम औढेरा (भाग) में अर्जित किए जाने वाले प्लाट संख्यांक:

1 से 4, 5(भाग), 20(भाग), 21 से 28, 29(भाग), 30 से 66, 67(भाग), 68 से 70, 71(भाग), 72(भाग), 82(भाग), 89(भाग), 90, 91, 92(भाग), 94(भाग), 95 से 103, 104(भाग), 105(भाग), 107(भाग)।

सीमा वर्णन:

क-ख रेखा बिन्दु "क" से आरंभ होती है और ग्राम औढेरा के प्लाट संख्यांकों 61, 62, 74, 73, 72/1, 72/410/2, 75, 118, 115/1, 115/2, 114, 113/1, 103/1, 170/2क, 170/2ख, 174/5, 248, 247, 183/4, 183/1, 229, 204, 206, 221, 208/2, 220, 219 से होती हुई ग्राम मालचुआ में प्रवेश कर प्लाट संख्यांकों 1,2,8,5,6,17, 18/2 से होकर गुजरती हुई बिन्दु "ख" पर मिलती है।

ख–ग रेखा बिन्दु 'ख' से आरंभ होती है और ग्राम मालाचुआ के प्लाट संख्यांकों 48 के उत्तरी सीमा, 47, 51, 52, 53 से होकर, 64, 65 के उत्तरी सीमा 66, 70, 104, 102/1, भाग संख्या 223 से होती हुई बिन्दु "ग" पर मिलती है।

ग–घ रेखा बिन्दु "ग" से आरंभ होती है और ग्राम मालाचुआ के भाग संख्यांक 223 से गुजरती हुई ग्राम ब्लाक पडरी में प्रवेश कर भाग संख्यांक 223, प्लाट संख्यांक 5, 20, 29, भाग संख्यांक 225, प्लाट संख्यांकों 107, 104, भाग संख्यांक 225 से होती हुई बिन्दु "घ" पर मिलती है।

घ–ङ रेखा बिन्दु "घ" से आरंभ होती है और ग्राम ब्लाक पडरी के भाग संख्यांक 225, प्लाट संख्याकों 107, 104, 105, 89, 92, 94, 67, 82, 72,71, से गुजरती हुई ग्राम मालाचुआ में प्रवेश कर प्लाट संख्यांक 236/666, भाग संख्यांक 229, प्लाट संख्याकों 659, 656, 636, 638/1, 638/2, 639, 640, 641, 643, 617, 618, 613/1, 612/3, 611, भाग संख्यांक 230 से होती हुई बिन्दु "ङ" पर मिलती है।

ड–क रेखा बिन्दु "ङ" से आरंभ होती है और भाग संख्यांक 230 के पूर्वी भाग से होकर ग्राम औढेरा में प्रवेश कर प्लाट संख्यांकों 145, 146/2, 142/1, 38, 39, 45/1, 47, 48/5, 48/4, 50, 54, 56, 63, 61 से होती हुई आरंभिक बिन्दु "क" पर मिलती है।

[सं. 43015/05/2013–पी.आर.आई.डब्ल्यू.–I]
एम.के. शर्मा, निदेशक

New Delhi, the 27th May, 2014

S.O. 1578.—Whereas by the notification of the Government of India in the Ministry of Coal number S.O. 2014 dated 20th September, 2013 issued under sub-section (1) of Section 4 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 or 1957) (hereinafter referred to as the said Act) and publiched in the Gazette of India, Part-II, Section 3, Sub-section (ii) dated 28th September, 2013, the Central Government gave notice of its intention to prospect for coal in 1066.002 hectares (approximately) or 2634.09 acres (approximately) of the lands in the locality specified in the Schedule annexed to that notification;

And, whereas, the Central Government is satisfied that coal is obtainable in a part of the said lands described in the Schedule appended to this notification.

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 7 of the said Act, the Central Government hereby gives notice of its intention to acquire the land measuing 1020.492 hectares or 2521.63 acres with all rights in or over the said lands described in the Schedule appended hereto:

Note 1: The plan bearing number SECL/BSP/GM/PLG/LAND/453, dated the 13th January, 2014 of the area covered by this notification may be inspected in the Office of the Collector, Umaria (Madhya Pradesh) or in the Office of the Coal Controller, 1, Council House Street, Kolkata-700001 or in the office of the South Eastern Coalfields Limited (Revenue Section), Seepat Road, Bilaspur-495006, Chhattisgarh.

Note 2: Attention is hereby invited to the provisions of Section 8 of the said Act which provides as follows:-

Objection to Acquistion:

"8 (1) Any person interested in any land in respect of which a notification under section 7(1) has been issued, may, within thirty days of the issue of the notification, object to the acquisition of the whole or any part of the land or any rights in or over such land.

Explanation:

(1) It shall not be an objection within the meaning of this section for any person to say that he himself desires to undertake mining operation in the land for the production of coal and such operation should not be undertaken by the Central Government or by any other person.

(2) Every objection under sub-section (1) of Section 8 shall be made to the Competent Authority in writing, and the Competent Authority shall give the objector an opportunity of being heard either in person or by a legal practitioner and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, either makes a report in respect of the land which has been notified under sub-section (1) of Section 7 or of rights in or over such land, or make different reports in respect of different parcels of such land or of rights in or over such land, to the Central Government Containing his recommendations on the objections together with the record of the proceedings held by him for the decision of the Government.

(3) For the purpose of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land or any rights in or over such land were acquired under this Act;"

Note 3: The Coal Controller, 1, Council House Street, Kolkata-700001, has been appointed by the Central Government as the competent Authority under section 3 of the said Act, vide notification number S.O. 905, dated the 20th March, 1987 published in Part II, Section 3, Sub-section (ii) of the Gazette of India, dated the 4th April, 1987.

SCHEDULE

Malachua Block, Johilla Area

District Umaria, Madhya Pradesh

(Plan bearing number SECL/BSP/GM/PLG/LAND/ 453, dated the 13th January, 2014)

All Rights :

(A) Revenue Land :

Sl. No.	Name of village	Patwari halka Number	General Number	Tahsil	District	Area in hectares	Remarks
1.	Awdhera	40	39	Pali	Umaria	291.946	Part
2.	Malachua	41	852	Pali	Umaria	444.967	Part
3.	Block Padari	42	752	Pali	Umaria	97.509	Part

Total: 834.422 hectares (approximately) or 2061.85 acres (approximately)

(B) Forest Land :

Sl. No.	Compartment Number	Range	Division	Type of Forest	Block	Area in hectares	Remarks
1.	223, 225, 229, 230	Ghunghuti	Umaria	Reserve Forest	Sohagpur	186.070	Part
	Total: -186. 070 hectares (approximately or 459.78 acres (approximately)						

Grand Total (A+B): 1020.492 hectares (approximately) or 2521.63 acres (approximately)

1. Plot numbers to be acquired in village Awdhera (Part) :

38(P), 39(P), 40 to 44, 45(P), 47, 48(P), 50(P), 54(P), 55, 56(P), 61 (P), 62(P), 63 to 71, 72(P) to 75(P), 103(P), 113(P), 114(P), 115(P), 116, 117, 118(P), 119 to 141, 142(P), 145(P), 146(P), 147 to 169, 170(P), 183(P), 204(P), 205, 206(P), 208(P), 219, 220(P), 221(P), 222 to 246, 247(P), 248(P), 249 to 409,72/410.

2. Plot numbers to be acquired in village Malachua (Part):

1(P), 2(P), 5(P), 6, 7, 8(P), 9 to 16, 17(P), 18(P), 47(P), 48 to 50, 51(P) to 53(P), 54 to 64, 65(P), 66(P), 70(P), 102(P), 104(P), 105 to 610, 611 (P) to 613(P), 617(P), 618(P), 619 to 635, 636(P), 638(P) to 641(P), 642, 643(P), 644, 645(P), 656(P), 659(P), 15/669, 236/666(P), 538/664, 445/668.

3. Plot numbers to be acquired in village Block Padari (Part):

1 to 4, 5(P), 20(P), 21 to 28, 29(P), 30 to 66, 67(P), 68 to 70, 71 (P), 72(P), 82(P), 89(P), 90, 91, 92(P), 94(P), 95 to 103, 104(P), 105(P), 107(P).

Boundary Description :

A-B Line starts from point 'A' and passes in village Awdhera through plot number 61, 62, 74, 73, 72/1, 72/410/2, 75,118,115/1,115/2,114,113/1, 103/1, 170/2k, 170/2kh, 174/5, 248, 247, 183/4, 183/1, 229, 204, 206, 221, 208/2, 220, 219 then enter in village Malachua and passes through plot number 1, 2, 8, 5, 6,17,18/2 and meets at point 'B'.

B-C Line starts from point 'B' and passes in village Malachua along northern boundary of plot number 48, through plot number 47, 51, 52, 53, along northern boundary of plot number 64, 65, through 66, 70, 104, 102/1, Compartment number 223 and meets at point 'C'.

C-D Line starts from point 'C' and passes in village Malachua through Compartment number 223, then enter in village Block Padari and passes through Compartment number 223, plot number 5, 20, 29, Compartment number 225, plot number 107, 104, Compartment number 225 and meets at point 'D'.

D-E Line starts from point 'D' and passes in village Block Padari through Compartment number 225, plot number 107, 104, 105, 89, 92, 94, 67, 82, 72, 71, then enter in village Malachua and passes through plot number 236/666, Compartment number 229, plot number 659, 656, 636, 638/1, 638/2, 639, 640, 641, 643, 617, 618, 613/1, 612/3, 611, Compartment number 230 and meets at 'E'.

E-A Line starts from point 'E' and passes through eastern part of Compartment number 230, then enter in village Awdhera and passes through plot number 145, 146/2, 142/1, 38, 39, 45/1, 47, 48/5, 48/4, 50, 54, 56, 63, 61 and meets at starting point 'A'.

[No. 43015/05/2013-PRIW-I]

M. K. SHARMA, Director

नई दिल्ली, 30 मई, 2014

का.आ. 1579.—केन्द्रीय सरकार ने कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 4 की उप–धारा (1) के अधीन भारत सरकार में कोयला मंत्रालय के द्वारा जारी की गई अधिसूचना संख्या का. आ. 2094 तारीख 11 जून, 2012 जो भारत के राजपत्र के भाग II, खंड 3, उप–खंड (ii), तारीख 23 जून, 2012 में प्रकाशित की गई थी, उस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट परिक्षेत्र की भूमि में जिसका माप 4265.783 हेक्टर या 10540.75 एकड़ है, कोयले का पूर्वेक्षण करने के अपने आशय की सूचना दी थी;

और केन्द्रीय सरकार का यह समाधान हो गया है कि इस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट उक्त भूमि के किसी भाग में कोयला अभिप्राप्य है ।

अतः, केन्द्रीय सरकार, उक्त अधिनियम की धारा 7 की उप–धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए इससे संलग्न अनुसूची में वर्णित 734.917 हेक्टर या 1816.02 एकड़ माप की उक्त भूमि का अर्जन करने के अपने आशय की सूचना देती है ;

टिप्पण 1 : इस अधिसूचना के अधीन आने वाले क्षेत्र के रेखांक संख्या एसईसीएल/बीएसपी/सीजीएम(पीएलजी)/भूमि/450, तारीख 15 नवम्बर, 2013 का निरीक्षण कलेक्टर, जिला अनुपपुर और शहडोल, मध्य प्रदेश के कार्यालय में या कोयला नियंत्रक, 1, काउंसिल हाउस स्ट्रीट, कोलकाता –700001 के कार्यालय में या साउथ ईस्टर्न कोलफील्ड्स लिमिटेड, (राजस्व अनुभाग), सीपत रोड, बिलासपुर–495006, छत्तीसगढ़ के कार्यालय में किया जा सकता है।

टिप्पण 2 : उक्त अधिनियम की धारा 8 के उपबंधों की ओर ध्यान आकृष्ट किया जाता है, जिसमें निम्नलिखित उपबंध हैः–

अर्जन के बाबत् आपत्तियां :

''8(1) कोई व्यक्ति जो किसी भूमि में जिसकी बाबत् धारा 7 की उप–धारा (1) के अधीन अधिसूचना निकाली गई है, हितबद्ध है, अधिसूचना के निकाले जाने से तीस दिन के भीतर सम्पूर्ण भूमि या उसके किसी भाग या ऐसी भूमि में या उस पर के किन्हीं अधिकारों का अर्जन किए जाने के बारे में आपत्ति कर सकेगा।

स्पष्टीकरण :

(1) इस धारा के अन्तर्गत यह आपत्ति नहीं मानी जाएगी कि कोई व्यक्ति किसी भूमि में कोयला उत्पादन के लिए स्वयं खनन संक्रियाएं करना चाहता है और ऐसी संक्रियाएं केन्द्रीय सरकार या किसी अन्य व्यक्ति को नहीं करनी चाहिए।

(2) उप–धारा (1) के अधीन प्रत्येक आपत्ति सक्षम अधिकारी को लिखित रूप में की जाएगी और सक्षम अधिकारी, आपत्तिकर्ता को स्वयं सुने जाने, विधि व्यवसायी द्वारा सुनवाई का अवसर देगा और ऐसी सभी आपत्तियों को सुनने के पश्चात् और ऐसी अतिरिक्त जांच, यदि कोई हो, करने के पश्चात, जो वह आवश्यक समझता है, वह या तो धारा 7 की उप–धारा (1) के अधीन अधिसूचित भूमि का या ऐसी भूमि में या उस पर के अधिकारों के संबंध में एक रिपोर्ट या ऐसी भूमि के विभिन्न टुकड़े या ऐसी भूमि में या उस पर के अधिकारों के संबंध में आपत्तियों पर अपनी सिफारिशों और उसके द्वारा की गई कार्यवाही के अभिलेख सहित विभिन्न रिपोर्ट केन्द्रीय सरकार को उसके विनिश्चय के लिए देगा।

(3) इस धारा के प्रयोजनों के लिए वह व्यक्ति किसी भूमि में हितबद्ध समझा जाएगा जो प्रतिकर में हित का दावा करने का हकदार होगा, यदि भूमि या किसी ऐसी भूमि में या उस पर के अधिकार इस अधिनियम के अधीन अर्जित कर लिए जाते हैं।

टिप्पण 3 : केन्द्रीय सरकार द्वारा, भारत के राजपत्र, भाग II, धारा 3, उप–धारा (ii), तारीख 4 अप्रैल, 1987 में प्रकाशित अधिसूचना संख्यांक का.आ. 905, तारीख 20 मार्च, 1987 द्वारा कोयला नियंत्रक, 1, काउंसिल हाउस स्ट्रीट, कोलकाता–700001 को उक्त अधिनियम की धारा 3 के अधीन सक्षम प्राधिकारी नियुक्त किया जाता है।

अनुसूची

बटुरा ब्लाक पश्चिम विस्तार, सोहागपुर क्षेत्र जिला अनुपपुर और शहडोल (मध्य प्रदेश)

(रेखांक संख्या एसईसीएल/बीएसपी/सीजीएम(पीएलजी)/भूमि/450, तारीख 15 नवम्बर, 2013)

सभी अधिकार :

क्रम सं.	ग्राम का नाम	पटवारी हल्का नम्बर	बंदोबस्त संख्या	तहसील	जिला	क्षेत्र हेक्टर में	टिप्पणी
1.	रामपुर	107	890	सोहागपुर	शहडोल	375.091	भाग
2.	बेलिया	107	722	सोहागपुर	शहडोल	60.210	भाग
3.	अतरिया	107	09	सोहागपुर	शहडोल	126.670	भाग
4.	खैरवना	106	205	सोहागपुर	शहडोल	76.801	भाग
5.	बिछिया	106	716	सोहागपुर	शहडोल	61.645	भाग
6.	कोदैली	29	167	अनुपपुर	अनुपपुर	34.500	भाग
				कुल : 734.917 हेक्टर या 1816.02 एकड़			

1. ग्राम रामपुर (भाग) में अर्जित किए जाने वाले प्लाट संख्याः– 1 से 149,165 से 205, 206 (भाग), 207 से 314, 316 से 319, 352 (भाग), 640, 761 से 767, 776 से 778, 782 से 786, 801 से 803, 804 (भाग), 821 से 828, 848 से 856, 859 (भाग), 860 से1157, 1158 (भाग), 1165 से 1180, 1246 से 1270, 1277 (भाग), 1286 से 1299, 1300 (भाग), 1362 (भाग), 1363 से 1376, 1448, 1449, 1451 से 1464, 1465 (भाग), 1466 (भाग), 1488 से 1564, 1569, 1575 (भाग), 1890 (भाग), 2212, 2213 (भाग), 2214 (भाग), 2215 (भाग), 2229 (भाग), 2230 (भाग), 2231 से 2247, 2248 (भाग), 2251 से 2601, 2602 (भाग), 2603 (भाग), 2604 (भाग), 2672 से 2683, 2684 (भाग), 2685 (भाग), 2686 से 2688, 2689 (भाग), 2702 (भाग), 2703 से 2707, 2708 (भाग), 2709 (भाग), 2710, 2711, 2712 (भाग), 2714 से 2717, 2718 (भाग), 2719, 2720, 3301, 3302, 3307, 3308, 3321, 3323 (भाग), 3329, 3340 ।

2. ग्राम बेलिया (भाग) में अर्जित किए जाने वाले प्लाट संख्याः– 1 (भाग), 4 (भाग), 8, 9(भाग), 10 से 15, 19, 20, 21 (भाग), 21/1/2 (भाग), 21/4 (भाग), 21/7 (भाग), 21/10 (भाग), 355 (भाग), 356, 357 (भाग), 358 (भाग), 359 (भाग), 360 से 405, 406 (भाग), 506, 510 ।

3. ग्राम अतरिया (भाग) में अर्जित किए जाने वाले प्लाट संख्याः– 700 (भाग), 701 (भाग), 702 (भाग), 703 (भाग), 711, 712 (भाग), 713 (भाग), 753 (भाग), 754 (भाग), 755 (भाग), 756 (भाग), 765 (भाग), 766 (भाग), 768 से 850, 876 से 879 ।

4. ग्राम खैरवना (भाग) में अर्जित किए जाने वाले प्लाट संख्याः– 445 (भाग), 446, 447, 448 (भाग), 449 (भाग), 450 से 561, 562 (भाग), 563 से 569, 570 (भाग), 571 से 574, 575 (भाग), 576, 577 (भाग), 585 (भाग), 643 (भाग), 644 (भाग), 645 से 736, 749, 766, 767, 768, 769, 770 ।

5. ग्राम बिछिया (भाग) में अर्जित किए जाने वाले प्लाट संख्याः– 677 (भाग), 678 (भाग), 679 (भाग), 693 (भाग), 694 (भाग), 721 (भाग), 722 (भाग), 723 से 725, 726 (भाग), 731 (भाग), 732, 983 (भाग), 984 (भाग), 985, 986, 987 (भाग), 987/1/2, 987/4/1, 987/15, 987/16/1, 987/16/2, 988, 989(भाग), 990(भाग), 1048 ।

6. ग्राम कोदैली (भाग) में अर्जित किए जाने वाले प्लाट संख्याः– 229 (भाग), 230 (भाग), 231 (भाग), 406 (भाग), 444 (भाग) से 448 (भाग), 450 से 478, 479 (भाग), 483 (भाग), 484 (भाग), 485 से 576, 577 (भाग), 579 (भाग), 580 (भाग), 585 (भाग), 586 से 593, 594 (भाग), से 598 (भाग) 599 से 607, 608 (भाग), 609, 610 (भाग), 611 (भाग), 612 से 625, 626 (भाग), 627 (भाग), 628 (भाग), 631, 632 (भाग), 633 (भाग), 634 से 636, 637 (भाग), 638 (भाग), 639 से 642, 643 (भाग), 655 (भाग), 657 (भाग), 659 (भाग), 660 (भाग), 661 (भाग), 743 से 746, 748, 749, 752 (भाग), 753 (भाग), 755, 812 ।

सीमा वर्णन :

क–ख रेखा बिन्दु ''क'' से आरंभ होती है और ग्राम कोदैली के प्लाट संख्यांकों 659, 660, 661, 611, 610, 406, 608, 753, 598, 596, 597, 595, 594, 584, 585, 577, 579, 580, 484, 483, 479, 444, 445, 446, 447, 448, 452, 231, 230, 229 से गुजरती हुई ग्राम कोदैली–रामपुर के सम्मिलित सीमा पर बिन्दु ''ख'' पर मिलती है।

ख–ग रेखा ग्राम कोदैली–रामपुर के सम्मिलित सीमा पर बिन्दु ''ख'' से आरंभ होती है और ग्राम कोदैली–रामपुर के भागतः सम्मिलित सीमा, ग्राम रामपुर के प्लाट संख्यांकों 875, 874, 640, 861, 860 के पश्चिमी सीमा के साथ होकर 859 से, 856, 848, 828, 826, 821 के पश्चिमी सीमा के साथ होकर 804 से, 803, 801, 786, 782, 778, 776, 1112 के पश्चिमी सीमा से गुजरती हुई बिन्दु ''ग'' पर मिलती है।

ग–घ रेखा बिन्दु ''ग'' से आरंभ होती है और ग्राम रामपुर के प्लाट संख्यांकों 767, 766, 762, 761, 311, 313, 314, 317, 316, 318, 319 के दक्षिणी सीमा, 319, 207 के पश्चिमी सीमा के साथ होकर, 206 से, 171, 170, 166, 165 के दक्षिणी सीमा के साथ होकर, 165, 167, 149 के पश्चिमी सीमा, 149, 142, 140 के दक्षिणी सीमा, 352 से, ग्राम रामपुर–बिछिया के भागतः सम्मिलित सीमा से गुजरती हुई बिन्दु ''घ'' पर मिलती है।

घ–ङ रेखा ग्राम रामपुर–बिछिया के सम्मिलित सीमा पर बिन्दु ''घ'' से आरंभ होती है और ग्राम बिछिया के प्लाट संख्यांकों 989, 990 से गुजरती हुई बिन्दु ''ङ'' पर मिलती है।

ङ–च रेखा बिन्दु ''ङ'' से आरंभ होती है और ग्राम बिछिया के प्लाट संख्यांकों 990, 984, 983, 726, 731, 732, 721, 722, 694, 693, 675, 678, 677, 987 से होकर ग्राम खैरवना में प्रवेश कर प्लाट संख्यांकों 652, 644, 643, 562, 570, 577, 575, 585 से गुजरती हुई बिन्दु ''च'' पर मिलती है।

च–छ रेखा बिन्दु ''च'' से आरंभ होती है और ग्राम खैरवना के प्लाट संख्यांकों 585, 445, 448, 449 से होकर ग्राम अतरिया में प्रवेश कर प्लाट संख्यांकों 765, 766, 768, 756, 755, 754, 753, 713, 712, 711, 703, 702, 701, 700 से, ग्राम अतरिया–बेलिया के भागतः सम्मिलित सीमा से होकर ग्राम बेलिया में प्रवेश करके प्लाट संख्यांकों 1, 4 से, 11, 10 के उत्तरी सीमा के साथ होकर, प्लाट संख्याकों 9 से, 8, 15, 14, 19, 20 के उत्तरी सीमा, 21/10, 21 से गुजरती हुई बिन्दु ''छ'' पर मिलती है।

छ–ज रेखा बिन्दु ''छ'' से आरंभ होती है और ग्राम बेलिया के प्लाट संख्यांकों 21, 21/10, 21/7, 21/4, 21/1/2, 355, 357, 358, 359, 406 से होकर ग्राम रामपुर में प्रवेश कर प्लाट संख्यांकों 3323, 2602, 2603, 2604, 2672, 2673, 2679, 2684, 2685 के पूर्वी सीमा, 2689, 2702 से, 2705, 2706, 2707 के पूर्वी, 2708, 2709, 2712 से, 2714, 2717 के पूर्वी सीमा, 2718 से, 2719, 3329, 2720 के पूर्वी सीमा, 2230, 2229, 2248, 2249, 2250, 2215, 2214 से, 2212, 1178, 1179, 1180, 1246, 1247, 1248, 1270, 1269, 1268, 1267 के पूर्वी सीमा, 1277 से, 1290, 1289, 1288, 1287, 1286, 1299, 1300, 1165, 1158 के पूर्वी सीमा, 1369, 1362 से, 1365, 1366, 1376, 1452, 1449, 1448 के पूर्वी सीमा, 1466, 1465, 1466 से, 1488, 1563, 1564 के उत्तरी सीमा, 1575, 1890 से गुजरती हुई बिन्दु ''ज'' पर मिलती है।

ज–झ रेखा बिन्दु ''ज'' से आरंभ होती है और ग्राम रामपुर के भागतः दक्षिणी सीमा से होती हुई ग्राम कोदैली के पूर्वी सीमा पर बिन्दु ''झ'' पर मिलती है।

झ–ञ रेखा बिन्दु ''झ'' से आरंभ होती है और ग्राम कोदैली के प्लाट संख्यांकों 643, 638, 637, 636, 633, 632, 628, 630, 627 से गुजरती हुई बिन्दु ''ञ'' पर मिलती है।

ञ–क रेखा बिन्दु ''ञ'' से आरंभ होती है और ग्राम कोदैली के प्लाट संख्यांकों 627, 626, 655, 657, 659 से गुजरती हुई आरंभिक बिन्दु ''क'' पर मिलती है।

[सं. 43015/03/2012 – पीआरआईडब्ल्यू–I]

एम. के. शर्मा, निदेशक

New Delhi, the 30th May, 2014

S.O. 1579.—Whereas, by the notification of the Government of India in the Ministry of Coal number S.O. 2094 dated 11th June, 2012 issued under sub-section (1) of Section 4 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) (hereinafter referred to as the said Act) and published in the Gazette of India, Part-II, Section 3, Sub-section (ii) dated 23rd June, 2012, the Central Government gave notice of its intention to prospect for coal in 4265.783 hectares (approximately) or 10540.75 acres (approximately) of the lands in the locality specified in the Schedule annexed to that notification;

And, whereas, the Central Government is satisfied that coal is obtainable in a part of the said lands described in the Schedule appended to this notification.

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 7 of the said Act, the Central Government hereby gives notice of its intention to acquire the land measuring 734.917 hectares or 1816.02 acres with all rights in or over the said lands described in the Schedule appended hereto:

Note 1 : The plan bearing number SECL/ BSP/ CGM(PLG)/ LAND/ 450 dated the 15th November, 2013 of the area covered by this notification may be inspected in the Office of the Collector, Shahdol and Anuppur, Madhya Pradesh or in the Office of the Coal Controller, 1, Council House Street, Kolkata - 700001 or in the Office of the South Eastern Coalfields Limited (Revenue Section), Seepat Road, Bilaspur-495006, Chhattisgarh.

Note 2 : Attention is hereby invited to the provisions of section 8 of the said Act which provides as follows:-

Objection to Acquisition:

"8 (1) Any person interested in any land in respect of which a notification under sub-section (1) of Section 7 has been issued, may, within thirty days of the issue of the notification, object to the acquisition of the whole or any part of the land or any rights in or over such land.

Explanation :

(1) It shall not be an objection within the meaning of this section for any person to say that he himself desires to undertake mining operation in the land for the production of coal and that such operation should not be undertaken by the Central Government or by any other person.

(2) Every objection under sub-section (1) shall be made to the competent authority in writing, and the competent authority shall give the objector an opportunity of being heard either in person or by a legal practitioner and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, either makes a report in respect of the land which has been notified under sub-section (1) of Section 7 or of rights in or over such land, or make different reports in respect of different parcels of such land or of rights in or over such land, to the Central Government, containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government.

(3) For the purposes of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land or any rights in or over such land were acquired under this Act".

Note 3 : The Coal Controller, 1, Council House Street, Kolkata, 700001, has been appointed by the Central Government as the competent authority under Section 3 of the said Act, vide notification number S.O. 905, dated the 20th March, 1987, published in Part -II, Section 3, sub-section (ii) of the Gazette of India, dated the 4th April 1987.

SCHEDULE

Batura Block West Extension, Sohagpur Area District Anuppur and Shahdol, Madhya Pradesh

[Plan bearing number SECL/BSP/CGM(PLG)/LAND/450 dated the 15th November, 2013]

All Rights :

Sl. No.	Name of village	Patwari halka Number	Bandobast Number	Tahsil	District	Area in Hectares	Remarks
1.	Rampur	107	890	Sohagpur	Shahdol	375.091	Part
2.	Beliya	107	722	Sohagpur	Shahdol	60.210	Part
3.	Atariya	107	09	Sohagpur	Shahdol	126.670	Part
4.	Khairwana	106	205	Sohagpur	Shahdol	76.801	Part
5.	Bichhiya	106	716	Sohagpur	Shahdol	61.645	Part
6.	Kodaili	29	167	Anuppur	Anuppur	34.500	Part

Total: - 734.917 Hectares or 1816.02 Acres

1. Plot Numbers to be acquired in village Rampur (Part):- 1 to 149, 165 to 205, 206(P), 207 to 314, 316 to 319, 352(P), 640, 761 to 767, 776 to 778, 782 to 786, 801 to 803, 804(P), 821 to 828, 848 to 856, 859(P), 860 to 1157, 1158(P), 1165 to 1180, 1246 to 1270, 1277(P), 1286 to 1299, 1300(P), 1362(P), 1363 to 1376, 1448, 1449, 1451 to 1464, 1465(P), 1466(P), 1488 to 1564, 1569, 1575(P), 1890(P), 2212, 2213(P), 2214(P), 2215(P), 2229(P), 2230(P), 2231 to 2247, 2248(P), 2251 to 2601, 2602(P), 2603(P), 2604(P), 2672 to 2683, 2684(P), 2685(P), 2686 to 2688, 2689(P), 2702(P), 2703 to 2707, 2708(P), 2709(P), 2710, 2711, 2712(P), 2714 to 2717, 2718(P), 2719, 2720, 3301, 3302, 3307, 3308, 3321, 3323(P), 3329, 3340.

2. Plot Numbers to be acquired in village Beliya (Part):- 1(P), 4(P), 8, 9(P), 10 to 15, 19, 20, 21(P), 21/1/2(P), 21/4(P), 21/7(P), 21/10(P), 355(P), 356, 357(P), 358(P), 359(P), 360 to 405, 406(P), 506, 510.

3. Plot Numbers to be acquired in village Atariya (Part):- 700(P), 701(P), 702(P), 703(P), 711, 712(P), 713(P), 753(P), 754(P), 755(P), 756(P), 765(P), 766(P), 768 to 850, 876 to 879.

4. Plot Numbers to be acquired in village Khairwana (Part):- 445(P), 446, 447, 448(P), 449(P), 450 to 561, 562(P), 563 to 569, 570(P), 571 to 574, 575(P), 576, 577(P), 585(P), 643(P), 644(P), 645 to 736, 749, 766, 767, 768, 769, 770.

5. Plot Numbers to be acquired in village Bichhiya (Part):- 677(P), 678(P), 679(P), 693(P), 694(P), 721(P), 722(P), 723 to 725, 726(P), 731(P), 732, 983(P), 984(P), 985, 986, 987(P), 987/1/2, 987/4/1, 987/15, 987/16/1, 987/16/2, 988, 989(P), 990(P), 1048.

6. Plot Numbers to be acquired in village Kodaili (Part):- 229(P), 230(P), 231(P), 406(P), 444(P) to 448(P), 450 to 478, 479(P), 483(P), 484(P), 485 to 576, 577(P), 579(P), 580(P), 585(P), 586 to 593, 594(P) to 598(P), 599 to 607, 608(P), 609, 610(P), 611(P), 612 to 625, 626(P), 627(P), 628(P), 631, 632(P), 633(P), 634 to 636, 637(P), 638(P), 639 to 642, 643(P), 655(P), 657(P), 659(P), 660(P), 661(P), 743 to 746, 748, 749, 752(P), 753(P), 755, 812.

Boundary Description :

A-B Line starts from point 'A' and passes in village Kodaili through plot number 659, 660, 661, 611, 610, 406, 608, 753, 598, 596, 597, 595, 594, 584, 585, 577, 579, 580, 484, 483, 479, 444, 445, 446, 447, 448, 452, 231, 230, 229 and meets at point 'B' on the common boundary of villages Kodaili-Rampur.

B-C Line starts from point 'B' on the common boundary of villages Kodaili-Rampur and passes along partly common boundary of villages Kodaili-Rampur, through village Rampur along western boundary of plot number 875, 874, 640, 861, 860, through 859, along western boundary of plot number 856, 848, 828, 826, 821, through 804, along western boundary of plot number 803, 801, 786, 782, 778, 776, 1112 and meets at point 'C'.

C-D Line starts from point 'C' and passes in village Rampur along Southern boundary of plot number 767, 766, 762, 761, 311, 313, 314, 317, 316, 318, 319, western boundary of plot number 319, 207, through 206, along southern boundary of plot number 171, 170, 166, 165, western boundary of plot number 165, 167, 149, southern boundary of plot number 149, 142, 140, through 352, along partly common boundary of villages Rampur-Bichhiya and meets at point 'D'.

D-E Line starts from point 'D' and passes in village Bichhiya through plot number 989, 990 and meets at point 'E'.

E-F Line starts from point 'E' and passes in village Bichhiya through plot number 990, 984, 983, 726, 731, 732, 721, 722, 694, 693, 675, 678, 677, 987 then enter in village Khairwana and passes through plot number 652, 644, 643, 562, 570, 577, 575, 585 and meets at point 'F'.

F-G Line starts from point 'F' and passes in village Khairwana through plot number 585, 445, 448, 449 then enter in village Atariya and passes through plot number 765, 766, 768, 756, 755, 754, 753, 713, 712, 711, 703, 702, 701, 700, along partly common boundary of villages Atariya-Beliya then enter in village Beliya and passes through plot number 1, 4, along northern boundary of plot number 11, 10, through 9, along northern boundary of plot number 8, 15, 14, 19, 20, through 21/10, 21 and meets at point 'G'.

G-H Line starts from point 'G' and passes in village Beliya through plot number 21, 21/10, 21/7, 21/4, 21/1/2, 355, 357, 358, 359, 406 then enter in village Rampur and passes through plot number 3323, 2602, 2603, 2604, along eastern boundary of plot number 2672, 2673, 2679, 2684, 2685, through 2689, 2702, along eastern boundary of plot number 2705, 2706, 2707, through 2708, 2709, 2712, along eastern boundary of plot number 2714, 2717, through 2718, along eastern boundary of plot number 2719, 3329, 2720, through 2230, 2229, 2248, 2249, 2250, 2215, 2214, along eastern boundary of plot number 2212, 1178, 1179, 1180, 1246, 1247, 1248, 1270, 1269, 1268, 1267, through 1277, along eastern boundary of plot number 1290, 1289, 1288, 1287, 1286, 1299, 1300, 1165, 1158, through 1369, 1362, along eastern boundary of plot number 1365, 1366, 1376, 1452, 1449, 1448, through 1466, 1465, 1466, along northern boundary of plot number 1488, 1563, 1564, through 1575,1890 and meets at point 'H' on the village boundary of Rampur.

H-I Line starts from point 'H' and passes along partly southern boundary of village Rampur and meets at point 'I'.

I-J Line starts from point 'I' and passes in village Kodaili through plot number 643, 638, 637, 636, 633, 632, 628, 630, 627 and meets at point 'J'.

J-A Line starts from point 'J' and passes in village Kodaili through plot number 627, 626, 655, 657, 659 and meets at starting point 'A'.

[No. 43015/03/2012-PRIW-I]

M. K. SHARMA, Director

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 22 मई, 2014

का.आ. 1580.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार लाइफ इन्शोरेन्स कारपोरेशन ऑफ इंडिया, कोलकाता के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या 11/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12/5/2014 को प्राप्त हुआ था।

[सं. एल-17012/13/2012-आईआर (एम)]

जोहन तोपनो, अवर सचिव

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 22nd May, 2014

S.O. 1580.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 11/2012) of the Central Government Industrial Tribunal/Labour Court, Kolkata now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Life Insurance Corporation of India, Kolkata and their workman, which was received by the Central Government on 12/5/2014.

[No. L-17012/13/2012-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 11 of 2012

Parties: Employers in relation to the management of LIC of India

AND

Their workmen.

Present : Justice DIPAK SAHA RAY, Presiding Officer

Appearance :

On behalf of the Management : Mr. Jayanta Basu, Ld. Counsel

On behalf of the Workmen : None

State : West Bengal Industry : Insurance

Dated : 10th April, 2014

AWARD

By Order No. L-17012/13/2012-IR(M) dated 29.06.2012 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication :

> "Whether the action of the management of Life Insurance Corporation of India, Kolkata in terminating the services (vide order dated 17/8/2010) of Shri Mahadev Yadav working as Development Officer on probation is legal and justified? What relief the workman is entitled to?"

2. When the case is taken up for hearing, none appears on behalf of the workman inspite of service of notice though the management is represented by its Ld. Counsel. It appears from the record that the workman neither appeared on the last two consecutive dates inspite of notice nor took any step in the matter. The above facts and circumstances and also the conduct of the workman go to show that at present the workman is not at all interested in the present reference. Perhaps, the workman has got no grievance against the management.

3. Accordingly, the present reference is disposed of by passing a "No Dispute Award".

JUSTICE DIPAK SAHA RAY, Presiding Officer

Dated, Kolkata

The 10th April, 2014

नई दिल्ली, 22 मई, 2014

का.आ. 1581.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार गार्डन रीच शिप बिल्डर्स एवं इंजीनियर्स लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या 05/2002) को प्रकाशित करती है जो केन्द्रीय सरकार को 12/5/2014 को प्राप्त हुआ था।

[सं. एल-32011/5/99-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 22nd May, 2014

S.O. 1581.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 05/2002) of the Central Government Industrial Tribunal/Labour Court, Kolkata now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Garden Reach Ship Builders & Engineers Limited and their workman, which was received by the Central Government on 12/5/2014.

[No. L-32011/5/99-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 05 of 2002

Parties : Employers in relation to the management of Garden Reach Ship Builders and Engineers Ltd.

AND

Their workmen.

Present : JUSTICE DIPAK SAHA RAY, Presiding Officer

Appearance :

On behalf of the Management : Mr. Dipak Kumar Ghosh, Ld. Counsel.

On behalf of the Workmen : None

State : West Bengal Industry : Ship Building

Dated : 31st March, 2014

AWARD

By Order No.L-32011/5/99-IR(M) dated 27.02.2002 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

> "Whether the action of the management of Garden Reach Ship Builders & Engineers Ltd. in dismissing Sh. Ainul Haque from service w.e.f. 30.6.94 is legal and justified? If not, to what relief the workman is entitled?"

2. When the case is taken up today for hearing, none appears on behalf of the workman/union inspite of service of notice though the management is represented by its Ld. Counsel. It appears from the record that on the last two consecutive dates none also appeared on behalf of the workman/union. Considering the facts and circumstances, it may reasonably be presumed that grievances between the parties have been amicably settled and perhaps for that reason the workman/union does not want to proceed with the case further.

3. Accordingly, the present reference is disposed of by passing a "No Dispute Award".

JUSTICE DIPAK SAHA RAY, Presiding Officer

Dated, Kolkata,

The 31st March, 2014.

नई दिल्ली, 22 मई, 2014

का.आ. 1582.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कांडला पोर्ट ट्रस्ट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 942/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 12/5/2014 को प्राप्त हुआ था।

[सं. एल-37012/4/92-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 22nd May, 2014

S.O. 1582.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 942/2004) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Kandla Port Trust and their workman, which was received by the Central Government on 12/5/2014.

[No. L-37012/4/92-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Binay Kumar Sinha,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad, Dated 20th December, 2013

Reference (CGITA) No. 942/2004

Reference (I.T.C) No. 03/1993(old)

The Chairman,
Kandla Port Trust,
A.O. Building,
Gandhidham (Kutch)-370201 .....Employer (1st party)

And

Their Workman
Sh. Rameshchandra K. Rajgor
Through the Union,
General Secretary Kandla Port Karmachari Sangh,
T.C.X.-5-94
Gandhidham (Kutch) 370201 .....Union (2nd party)

For the First Party : Shri Kishor V. Gadhia, Advocate

For the Second Party : Shri S.N. Gandhi, Advocate

AWARD

The Central Government/Ministry of Labour, New Delhi vide Order No. L-37012/4/92-IR(Misc) dated 18.03.1993 in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 , referred the dispute for adjudication to the Industrial Tribunal Rajkot on the terms of reference in the Schedule:

SCHEDULE

> "Whether the action of the management of Kandla Port Trust, Kandla in terminating the services of Shri Ramesh Chandra K. Rajgor, Messenger, appointed on compassionate ground, after 4 years of service, on medical grounds of defect in eyes, justified and legal? If not to what relief the workman is entitled for and what directions are necessary in the matter?"

2. The case of the Union (2nd party) as per statement of claim (Ext.3) filed on 29.04.1993 is that Rameshchandra K. Rajgor was appointed on compassionate grounds in the year 1982 vide first appointment letter dated 03.07.1982 and thereafter giving artificial intermittent breaks for a day in the service appointment order dated 05.10.1982, 05.01.1983, 06.04.1983, 13.07.1983, 10.10.1983 , 07.01.1994, 12.04.1984, 11.07.1984,15.10.1984, 14.01.1985, 16.04.1985, 16.07.1985, 17.10.1985, 20.01.1986, 23.04.1986 and 31.07.1986 were issued. The Deputy Secretary of KPT issued an order No. GA/PS/9403.877 dated 8th August 1986 informing Rameshchandra K. Rajgor that offer of appointment for the post of messenger vide GA/PS/9403/411 dated 24.04.1986 is cancelled as he (workman) was found medically unfit for appointment in Kandla Port Trust due to suffering from Myasthania Gravis. Rameshchandra requested to secretary K.P.T. to reconsider his case vide letter dated 10.06.1986. The 1st party vide letter dated 09.05.1986 also intimated that as per report of Sr. Medical Officer Kandla Port Trust he has been declared unfit due to suffering from Mysthenia Gravis and if aggrieved by unfit certificate he may make appeal along with the certificate from other medical practitioner to show possibility of error in K.P.T. Doctor's report. The workman Rameshchandra got himself examined by civil surgeon; Bhuj who issued certificate that earlier medical certificate of K.P.T. appears to be error in judgement. Then the workman was informed to appear before medical board of K.P.T. Hospital vide letter dated 05.07.1986. The port authorities informed Rameshchandra on 8/11.08.86 that appointment order has been cancelled. The representation of Rameshchandra was rejected on 04.09.1986. Subsequently, Rameshchandra produced the certificate from Jaslok Hospital, Mumbai and was examined by Dr. Anil D. Desai at Mumbai and he was found fit for service as per certificate dated 07.08.1991. Then workman made representation on 19.11.1991 to the chairman of K.P.T. for reconsidering his case. But as it was replied by K.P.T. that his case for appointment as messenger cannot be reconsidered. Then Rameshchandra approached the Union and the Union took up the matter before the conciliation officer vide letter dated 05.03.1992. But matter could not be resolved resulting in failure report and followed by the order of the appropriate Government. The case of the 2nd party is that the defect of eyes of Rameshchandra is natural and he has no defect in the eye sight and that medical Board's report of K.P.T. suffers from error of judgement in view of certificate issued by Government Civil Hospital, Bhuj as well as Doctor of Jaslok Hospital, Mumbai , a country fame Hospital. So the impugned decision of the K.P.T. (1st party employer) is illegal and arbitrary. The father of Rameshchandra was serving in K.P.T. who expired during service period and deceased family has no other support and income and so, appointment to Rameshchandra. Son of deceased workman was offered as per the circular issued by the appropriate Government from time to time. Rameshchandra worked around four years to the satisfaction of the superiors of the 1st party and so after a period of 4 years, the 1st party employer has no legal right to terminate the services of Rameshchandra K. Rajgor on the ground that he is medically unfit as suffering from Myasthania Gravis. Further case is that appointment on compassionate ground is made on regular basis, but the 1st party employer issued appointment order giving artificial intermittent breaks in the service of Rameshchandra with a view to avoid grant of various fringe benefits which are available to the permanent workman. The action of the 1st party in giving artificial intermittent breaks is illegal and malafide. On these scores prayer is made by the 2nd party (Union) to set aside the impugned cancellation of offer of appointment to Rameshchandra K. Rajgor and by way of terminating his services and for reinstatement on his original post of messenger with full back wages and continuity of service and to any other relief to which the concerned Rameshchandra is found entitled.

3. As against this the contentions of the 1st party as per written statement (Ext.5) dated 29.07.1993 are that Rameshchandra K. Rajgor was initially appointed as a messenger on ad hoc basis on compassionate grounds on 03.07.1982 for a period of three months or till the post was to be filled on regular basis which ever was earlier and this way his ad hoc appointment was continued for further three months after one day's break after every three months and the appointment orders carrying that it will not confer any claim upon Rameshchandra for regular appointment on the post. Subsequently, Rameshchandra was offered the post of messenger on regular basis vide office memorandum No. GA/PS/9403/411 dated 24.04.1986 which was subject to character verification, medical fitness. On production of certificate of fitness from C.M.O. K.P.T. Hospital,Gopalpuri. In pursuance of offer of appointment Rameshchandra was examined on 25.04.1986 by the senior medical officer of Kandla Port Trust who declared him unfit for employment in K.P.T. due to suffering from Myasthania Gravis and Rameshchandra was informed that it is open to him to make appeal along with certificate from other medical practitioner to support that there was a possibility of error of judgement in the findings of senior medical officer K.P.T. and that if such certificate if produced should contain a note by the medical practitioner that he has been given full knowledge of the fact that the candidate has already been declared unfit for service by a medical officer and that appeal was to be made within a month. Further contention is that Rameshchandra brought a certificate from a private doctor stating that there seemed to be an error in judgement on going through the detailed history. Rameshchandra made an appeal to reconsider his case vide letter dated 10.06.1986 and then Rameshchandra was directed to appear before the medical board for re-examination on 19.07.1986 and he was re-examined by the

medical board of four doctors, C.M.O. , Sr. M.O. (Surgeon), Assistant M.O. (Opthalmologist) and senior M.O. who declared him "not fit" for appointment in K.P.T. Accordingly the services of Rameshchandra was terminated w.e.f. 04.10.1986 vide letter No. EG/PS/4302/ 3845 dated 04.10.1986 and he was paid an amount of Rs. 5,562.90 as terminal benefits. Further contention is that Rameshchandra brought a certificate from medical practitioner after a lapse of five years in which it has been stated that he was examined on 12.07.1990 and 27.08.1991 for his complaint of bilateral ptosis and opthalmoplegia and condition remains the same. He has ocular myapathy and is fit for any job in the category of peon or messenger". It is further case of the 1st party that since Rameshchandra has already been paid terminal benefits when his services were terminated and Rameshchandra also accepted that terminal benefits and so his case cannot be considered and the demand made at belated stage. Further case is that there is no error of Judgement of the medical board of K.P.T. Further contention is that the persons appointed on compassionate grounds are not exempted from medical fitness. It has been denied about any mala fide intention of the 1st party to give ad hoc appointment to Rameshchandra on compassionate ground. On these contentions prayer is made to dismiss the reference since the 2nd party/ Union/ Workman is not entitled to any relief.

4. The 2nd party Union also filed rejoinder (Ext.8) to the written reply of the 1st party reiterating its stand so taken in the statement of claim and denying the contention of the 1st party (K.P.T.).

5. The 1st party also filed reply (Ext.3) to the rejoinder of the 2nd party Union almost reiterating to its stand/ contentions so taken in the written statement and denying the contentions of the Union in rejoinder.

6. The concerned workman Rameshchandra deposed-in support of S.P. case vide Ext. 17 and was also cross examined by the 1st party's lawyer. The 1st party also examined senior medical officer of K.P.T. namely Dr. Mahesh Bopat to support the medical unfitness report given to workman Rameshchandra by senior medical officer of K.P.T. and medical boards report of K.P.T. Hospital declaring Rameshchandra unfit for appointment in K.P.T. The 2nd party has also relied upon the medical fitness report given by medical practitioner of Anjar, Doctor of Civil Hospital, Ahmedabad and the Doctor of Jaslok Hospital, Mumbai that he (Rameshchandra) is fit to work as peon/messenger.

7. The 2nd party Union filed 11 documents with a list Ext. 4 on 28.04.1993. Ext.15 series are copies of ad hoc appointment order of Ramshchandra 17 in number of different dates from 03.07.1982 to 31.07.1986. Ext. 16 is letter dated 09.05.1986 of 1st party addressed to Rameshchandra. Ext. 18 is copy of order dated 8/11.08.86 cancelling the offer of appointment. Ext. 19 is copy of letter dated 10.06.1986 of Rameshchandra to the 1st party. Ext.20 is copy of certificate dated 08.06.1986 of Dr. S.R. Dave of Anjar (EI), medical report of Dr. J.N. Patel of civil Hospital Ahmedabad (E-II & E/III) showing admission of Rameshchandra on 01.06.1986 diagnosis, medicines of discharge on 06.06.1986. Ext.21 is letter of K.P.T. secretary's office dated 04.09.1986 rejecting the representation of Rameshchandra. Ext.22 is copy of certificate issued by Dr. Anil D. Desai, F.R.C.P.(E) F.A.M.C. of Jaslok Hospital, Mumbai dated 27.08.1991. Ext.23 is copy of appeal dated 19.11.1991 made by Rameshchandra to chairman K.P.T. Ext.24 is copy of reply letter of Dy. Secretary K.P.T. addressed to Rameshchandra dated 13.12.1991 rejecting the request for reinstatement. Ext.25 is copy of letter dated 05.03.1992 of the Union taking up the matter with conciliation officer. Ext. 26 is copy of letter from the 1st party employer dated 05.07.1986 to appear before the Medical Board.

8. The 1st party along with w.s. has attached Annexure A dated 24.04.1986 which is offer of appointment to Rameshchandra and 4 others and also copy to C.M.O. K.P.T. for medical examining of the 5 persons including Rameshchandra. Annexure B is certificate dated 25.04.1986 of senior medical officer K.P.T. Hospital to Rameshchandra mentioning no any disease, constitutional weakness or bodily infirmity except myasthenia Gravis which is disqualification for employment attached with copy of candidates statement and declaration. Annexure C marked Ext.49 is copy of medical examination of Rameshchandra K. Rajgor by medical board of K.P.T. medical department dated 21.07.1986. The 1st party again filed two documents with list Ext.30 which are copy of memorandum/offer of appointment dated 24.04.1986 and medical report dated 25.04.1986 of senior medical officer K.P.T. (medical Department).

9. In view of the rival contention of the parties in their pleadings, the following issues are taken up for determination in this case.

ISSUES

(I) Is the reference maintainable?

(II) Has the 2nd party Union valid cause of action in this case?

(III) Whether the action of the 1st party (K.P.T.) in terminating the services of the workman Shri Rameshchandra K. Rajgor, messenger appointed on compassionate grounds, after four years of service on medical ground of defect in eyes is justified and legal?

(IV) Whether the workman Shri Rameshchandra is entitled for the reliefs as claimed? What directions are necessary in the matter?

FINDINGS

10. **ISSUE NO III :** This is admitted fact that the workman Rameshchandra K. Rajgor had been given appointment by the management of K.P.T. on compassionate ground that his father being employee of Kandla Port Trust died while in service. There is virtually uniform rules and regulation in the state or Central Government services, P.S.U. etc. as to provisions of compassionate appointment of ward of employee who dies during tenure of service to protect family of such deceased employee in facing financial hardship. In the instant case too, the management of Kandla Port Trust provided compassionate appointment on 03.07.1982 to Rameshchandra for the motto of protecting the family of its deceased employee i.e. the father of Rameshchandra who died in accident during tenure of service in K.P.T. and the management of K.P.T. provided job by way of compassionate appoint to the son of deceased employee. More so, it was incumbent upon the management of K.P.T. to take medical examination of Rameshchandra, the son of deceased employee and if there was any defect in eyes to him, the management could have asked to the family of deceased for providing compassionate appointment either to the widow of deceased employee or to another son/daughter of the deceased employee. But it was not done so by the management of Kandla Port Trust and selected the workman Rameshchandra K. Rajgor for compassionate appointment and his compassionate appointment was allowed to be continued up to four years by giving artificial intermittent break of one day right from 03.07.1982 to 31.07.1986 by way of issuing as many as 17 appointment orders (Ext.15 series). More so, is none of the appointment order there is any stipulation that his appointment is subject to medical fitness report of the medical officer of K.P.T. Hospital. None of the appointment order contain the word compassionate appointment or like this that appointment of Rameshchandra is made on compassionate ground. This essential ingredient is lacking in appointment orders whereas even the 1st appointment order dated 03.07.1982 does not contain the word/sentence as to compassionate appointment of Rameshchandra, son of deceased employee of K.P.T. Rather the 1st appointment order and all subsequent appointment orders are identical as that of ad hoc appointment, will not confer any claim for regular appointment. Such wording usually made in temporary appointment order on casual basis other than the compassionate appointment but such wording is not in consonance with the compassionate appointment of Rameshchnadra K. Rajgor. Yet examining the factum of as many as 17 appointment orders (Ext.15 series) it is obvious that the workman (Rameshchandra) was allowed to continue work of messenger (class IV grade) and there was no any complaint against his work of messenger or that he is observed to be unfit for the work of messenger during his long 4 year tenure of service.

11. Even the last appointment order dated 31.07.1986 does not speak about giving of offer of appointment with covenant of subject to medical report of K.P.T. Hospital. More so, the offer of appointment dated 24.04.1986 which is annexure A with w.s. of the 1st party is common to 5 persons mentioned in the bottom of page 2. This does not indicate that the workman Rameshchandra K. Rajgor at Sl.No. 4 is appointee on compassionate ground rather shows 'ad hoc' with that of other four persons. It has been seen that after almost four years of job of messenger Rameshchandra was given offer of appointment. The 1st party has not shown as to how many period other 4 persons were on ad hoc appointment or that those persons were also appointed on compassionate ground but were given ad hoc appointment.

12. Now coming to examine the medical report given by Sr. Medical officer of K.P.T. Medical department dated 25.04.1986. This speaks that there was no any disease (communicable or otherwise, constitutional weakness or bodily infirmity except "Myasthenia Gravis". Even Rameshchandra was found suffering from Myasthenia Gravis as per medical report dated 25.04.1986 but there is no evidence on behalf of the 1st party that his work as messenger had been found unsatisfactory due to such eye decease. More so, even after medical report dated 25.04.1986, the management of K.P.T. issued appointment order 'ad hoc' dated 31.07.1986. The medical Board's report dated 19.07.1986/21.07.1986 of medical department of K.P.T. speaks that Rameshchandra is suffering from Myasthenia Gravis for the last nine years …. Bilateral ptosis of both eyes and eye balls are not moving in any directions. There is paralysis of the extra ocular muscles and hence eye balls are fixed in position. The pupils are reacting to light- for direct and corneal reactions…….It is a progressive disease and it affects the other muscles of the body too. The medical board of the First party considered Rameshchandra not fit for appointment.

13. But if the medical board's report is taken into account that Rameshchandra is suffering from Myasthenia Gravis for the last nine years, then it has also to be considered and to have taken into account that workman Rameshchandra performed the job of the messenger for about four years without dissatisfaction of the management of K.P.T. and was being performing the works of messenger without an difficulty.

14. The one aspect of the medical report relied upon by the 1st party (management of K.P.T.) is that since medical department of K.P.T. gave report as to not fit for the appointment offered and so offer of regular appointment was cancelled that tantamount to termination of the workman's services which was being performed without dissatisfaction of the management of K.P.T. but one fine morning he was found unfit due to eye disease by technical terms suffering from 'Myasthenia Gravis'.

15. But there is another aspect of the medical reports produced by the 2nd party Rameshchandra that go to support that even he is suffering from Myasthenia Gravis his condition is stable and so he is found fit for performing the job of messenger /peon (class IV grade).The certificate of Dr. S.R. Dave of civil Hospital, Bhuj Ext.20 granted to Rameshchandra on 08.06.1986 go to show that it was brought to notice of Dr. S.R. Dave that patient Rameshchandra has been made unfit by the Kandla Port Trust medical examiner but on examination by Dr. S.R. Dave on 08.06.1986 of Rameshchandra his ptosis of eyelids and certifying that his previous medical examiner labelled him as case of Myasthenia Gravis which to me seems to be an error of judgement as going through detailed history he did not give any evidence of muscular weakness while he was in service since last four years in Kandla Port Trust office. There is also medical prescription and advise of Dr. J.N. Patel of Civil Hospital, Ahmedabad that go to show that Rameshchandra (2nd party workman) was admitted in Civil Hospital on 01.08.1986 and was discharged on 06.08.1986 diagnosed as myasthenia Gravis and certificate was granted he is suffering from Myasthenia Gravis. He is fit for duty provided he takes medicines regularly which has been prescribed in given discharge card and 15days medicines had been prescribed to him (Rmaeshchandra). On behalf of the 2nd party yet another medical certificate dated 27th August 1991 (Ext.22) of Dr. Anil D. Desai of Jaslok Hospital, Mumbai has been filed that reveals that "Mr Ramesh Rajgor was first seen by me (Doctor) on 20th December, 1985 at the age of 23 years for his complaints of bilateral ptosis and opthalmoplegia. He was admitted to Jaslok Hospital and investigated. He has been re-examined on 12th July, 1990 and 27th August, 1991. His condition of bilateral ptosis and ophthalmoplegia remains the same. He has ocular myopathy and is fit for job in the category of peon or messenger."

16. The evidence of the 1st party witness Dr. Mahesh Bopal is of formal nature. He had not examined Shri Rameshchandra K. Rajgor. He was not among a doctor of medical board. He formally proved the medical examination report of Sr. M.O. and of medical board when those certificate were shown to him Ext. 30/2 and Ext.49. He admitted in evidence during cross-examination that he was not in job at K.P.T. medical Department when the two certificates were prepared by the medical department and the said Rameshchadra was not examined inhis presence.

17. From making comparison of the two medical reports relied upon by the management of K.P.T. (1st party) on one hand and the three medical reports relied upon by the 2nd party on the other hand, I am of the considered view that the medical board of K.P.T. medical department, appears to have dittoing the earlier medical report of senior medical officer who was also one of the signatory doctor signing the medical board report. More so, the medical board in its report has not cared to controvert the certificate of Dr. Dave (Ext. 20) regarding errors of Judgement in the report of Sr. Medical Officer of K.P.T. Rather Medical Board of K.P.T. medical department have gone many steps forward in its report dated 21.07.1986 that "Rameshchandra's eye problem (Myasthenia Gravis) is progressive disease and it affects the other muscles of the body". Whereas report dated 25.04.1986 of senior medical officer K.P.T. shows Rameshchandra has no any disease, no constitutional weakness or bodily infirmity except Mysthania Gravis Sr. M.O.'s report does not say as to progressive disease. Now coming to examine the medical reports/certificates relied upon by the 2nd party. The certificate of Dr. Dave dated 08.06.1986 after detail examination of Rameshchandra found error in judgement of senior medical officer of K.P.T. because having no muscular weakness while he was in service. The report of Dr. J.N. Patel of Civil Hospital, Ahmedabad dated 06.08.1986 did not find Rameshchandra has any progressive disease of Mysthania Gravis and that he should take medicine regularly and he is fit for duty. The certificate dated 27th August, 1991 of Dr. Anil D. Desai of Jaslok Hospital, Mumbai, clearly shows that Rameshchandra Rajgor remained under periodical observation of Jaslok Hospital on 29th December, 1985, 12th July, 1990 and 27th August, 1991, Ramesh has complaint's of bilateral ptosis and opthalmoplegia and his such condition remains the same. He has ocular myopathy and is fit for any job in the category of peon or messenger. The report and certificate of doctor of Jaslok Hospital which covers the examination of Rameshchandra from December 1985 to August 1991 for about 6 years clearly speaks that there is no progressive disease of Myasthenia Gravis that could affects the other muscles of the body too. The report of Jaslok Hospital, Mumbai has clearly negative the doctor's report of medical department of Kandla Port Trust. More so, the factum of 4 years of working and performing duty by Rameshchandra K. Rajgor clearly speaks that he is not suffering from progressive disease of Myasthenia Gravis , rather is fit to perform duty of messenger in class IV grade at Kandla Port Trust.

18. The 1st party has relied upon some case laws for supporting the action of the management of Kandla Port Trust in terminating the services of Rameshchandra by cancellation of appointment on regular basis. (1) The case law of Bhavnagar Municipal Corporation vs. Salimbhai Umarbhai Mansuri (2013 III CLR 1 is on section 2(oo) , 25G, 25H of the I.D. Act, 1947 and is based on termination of service of contractual appointment for a fixed period. This case law is not applicable in the instant case because the workman Shri Rameshchandra K. Rajgor's appointment on compassionate ground was not contractual appointment because the employer (K.P.T.) purposely issued as many as 17 appointments orders in the garb of temporary appointment, knowing fully that Ramesh appointment is on compassionate ground and more so

Ramesh had been given offer of appointment on regular basis and on medical ground of disease in eye his appointment had been cancelled. (2.) The case law of Anantrai Gordhandas Jethwa vs. Gujarat Electricity Board (2006 11 CLR 908) based on birth date correction and delay and latches which is not applicable in the instant case. (3.) the case law of Gujarat Industrial Development corporation vs. Revabhai Maganbhai Patel (2013 111 CLR 187) on the point of cancellation of appointment is not at all applicable in the instant case because the appointment of respondent as Asst. Manager was cancelled because the post was reserved for S.T. community. (4.) The case law of Amarsigh Waghela Vs. GSRTC and another (2003 Lab. I.C. 1125) is not applicable in the instant case. In the given case law workman was driver and after nine years in medical report there was weak vision and not fit for job of driver. In the instant case the workman Rameshchandra appointed on compassionate ground and performing duty of messenger for four years without complaints. (5.) The case law of workman of Motipur Sugar Factory (pvt.) Ltd. Vs. Motipur Sugar Factory (pvt.) ltd (LLJ 1965 page 17 S.C.) is based on the factum of notice issued by the employee to the workman individually alleging that they were adopting go-slow tactics at the instigation of Union so is not applicable in the instant case because workman Rameshchandra worked as messenger for four years without complaint of his employer. (6.) The case law of Pappu vs. Management of Tajiv Automobiles Workshop and Show Room and another (2012 (4) L.L.LN. 181) is based upon termination at the end of contracted period whereas in the instant case Rameshchandra's case was not contract job rather is based on compassionate appointment (7.) the CAV judgement of the Hon'ble Gujarat High Court in S.C.A. No. 3257/2010 (Pankaj Suresh Lalwani & others Vs, Kadla Port Trust is not applicable in the instant case. In the given case respondents workman initially joined as daily wager. So is not the case of workman Ramesh in the instant case. (8)The case of Karnataka State Road Transport Corp. Vs. Lakshmidevamma & another (2001 11 CLR 640) the respondent was dismissed from service after domestic enquiry. In the Instant case, it is not applicable. (9) The case law of G.S.R.T.C, Ahmedabad Vs. Premsingh L. Rathod [2001 (1) G.L.H. 490] on the point-Labour Court cannot go beyond the terms of reference has no bearing in the instant case because this tribunal has to adjudicate as per terms of reference whether as to whether termination of workman Rameshchandra, messenger appointed on compassionate ground after 4 years of service on medical ground of defect in eyes is justified or not. (10) The case law of Manabendra Kr. Choudhary vs. First Labour Court & other [1990 (61) F.L.R. 560] is alos not applicable (11) The case law of new India Assurance Company Ltd. Vs. Manphool Singh and others (2008 11 CLR 56) is a good law that opinion of larger bench is to be followed but how this case law will be applicable in the instant case. The 1st party's lawyer could not convince to this Tribunal. There is no question of conflict between two judgements on any question of law or interpretation of statute. In the instant case crux of the case is error of judgement in medical examination of workman which is not a question of law or interpretation of statute. (12) The case law of state of U.P. vs. Rameshchandra Trivedi 1976 SCC (L&S) 542 on Article 311 (C) is not applicable in the instant case.

19. It has been argued on behalf of the 2nd party that the defect shown by the medical officer of K.P.T. is not at all any disease that Shri Rameshchandra cannot perform duty of messenger and if the management of K.P.T. would have got examined Shri Rameshchandra before appointment as being done in regular cases the present situation should not have come that employee is removed after serving satisfactorily for 4 years. It has been argued that once a senior Doctor has declared Ramesh unfit, the decision will not be changed by other Doctor as it is the same department whereas the relevant certificates submitted by the workman are sufficient to establish that he is fit for the post of messenger on which he worked such a long period. It has been further argued that since service of Rameshchandra has been terminated illegally, so, the acceptance of terminal benefits of Rs. 5,562.90 by Rameshchandra is due to ignorance of rules and regulations and it do not prevent him to ask for justice and reinstatement into service since it was a compassionate appointment case and not direct recruitment case. On the other hand, it has been argued that since the workman Rameshchandra had accepted the terminal benefits comprising of gratuity, retrenchment compensation and one month notice pay so now the workman 2nd party Union is not entitled to get relief as prayed for.

20. Upon consideration of the materials on the record as discussed above and also considering that the case laws relied upon by the 1st party do not fit in the facts and circumstances of the instant case. This Tribunal is of considered opinion and therefore, find and hold that the action of the management of Kandla Port Trust in termination the services of Shri Rameshchandra K. Rajgor. On medical ground of defect in eyes is unjustified and illegal. So the ISSUE NO. III is decided against the 1st party (management of Kandla Port Trust).

21. **ISSUE NO. I :** From the discussion and consideration in the foregoings while giving findings to ISSUE NO.III it has been seen that the workman Rameshchandra was under constant struggle to get the defect of eyes rectified by availing treatment from Jaslok Hospital, Mumbai till August, 1991 and was making last representation to the management of K.P.T. on 19.11.1991 for his reinstatement on regular post of messenger vide Ext.23 and receiving reply of K.P.T. dated 13.12.1991 (Ext.24) and thereafter raising of dispute by the Union (Kandla Port Karmachari

Sangh) dated 05.03.1992 to A.L.C. (Centre) Adipur, Kutch (Ext.25) sufficiently establishes that there is no latches and delay in raising the Industrial Dispute. So such argument of the 1st party is not tenable that 5 years delay is raising dispute go to the root in defeating of the 2nd party's claim. So the case laws relied upon by the 1st party (2006 11 CLR 908) Anantrai Gordhandas Jethwa Vs. Gujarat Electricity Board, 2012 1 CLR762 –state of Gujarat and another vs. Kalidas & another and 2007-11-LLJ S.C. 813 (Director, Food and supplies, Punjab and another Vs. Gurmit Singh on point of delay and latches are not applicable in the instant case. The case law of Narendra Kumar Chandla Vs. State of Harayana and other (1995-Lab I.C. 309) relied upon by the 1st party rather support the case of the 2nd party. On point of physical disablement of workman that employer should adjust him in a post where he could suitable discharge his duties. The workman Rameshchandra had performed the duty of messenger (class iv) with utmost satisfaction to the employer having no any complaint as to defect in his eyes and so on report of Doctor of K.P.T. that he is unfit was not desirable for the 1st party to snatch his bread earning for the family whose father serving to the K.P.T. died in accident resulting in his appointment on compassionate ground. So, I find and hold that the reference is maintainable.

22. **ISSUE NO. II :** In view of findings to ISSUE No. i and iii in the foregoings, I further find and hold that the 2nd party has valid cause of action to raise Industrial dispute in this case.

23. **ISSUE NO. IV :** The case laws relied upon by the 1st party reported in 2006 (108) F.L.R. 619 (G.S.R.T.C. Vs. Shankarbhai Maljibhai Sandhwa) does not fit in the instant case because it has been held while deciding ISSUE No iii that termination of Rameshchandra by the management of K.P.T. is quite illegal and unjustified. So the acceptance of terminal benefit by Rameshchandra has no bearing in the eye of law and he may be directed to refund the terminal benefit on his reinstatement. The facts of the given case laws on the factum of tendering resignation but resignation not withdrawn before it was accepted so it was held no relationship of master and servant. But in the instant case relationship of master and servant was existing due to illegal termination and even on acceptance of terminal benefit by Shri Rameshchandra is not going to defeat his right to the post of messenger and so the action of the 1st party will not fall under the provisions of section 2(00)(bb) of the I.D. Act, 1947.

24. As per discussions and consideration made above, I further find and hold that the workman Shri Rameshchandra K. Rajgor is entitled for reinstatement to the post of messenger with full back wages and continuity of service and consequential benefits.

The reference is allowed. However, no order as to any cost.

The 1st party is directed to reinstate Shri Rameshchandra K. Rajgor to the post of messenger on which he was working till his termination and is further directed to pay the back wages and granting him continuity of service with consequential benefits, within two months of the receipt of copy of award failing which the back wages will carry interest @ 9% P.A.

This is my award.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 22 मई, 2014

का.आ. 1583.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ओ.एन.जी.सी. लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 748/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 12/5/2014 को प्राप्त हुआ था।

[सं. एल-30012/53/2001-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 22nd May, 2014

S.O. 1583.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 748/2004) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of ONGC Limited and their workman, which was received by the Central Government on 12/5/2014.

[No. L-30012/53/2001-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Binay Kumar Sinha,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,

Dated 26th November, 2013

Refernce: (CGITA) No.748/2004

Reference (ITC) No. 34/2001 (Old)

1. The Executive Director,
ONGC, WRBC, Makarpura Road,
Baroda (Gujarat) 390009

2. The Party Chief ,
ONGC Ltd, G.P. 25,
Makarpura Road,
Baroda-390009 (Gujarat) ....First Party (Management)

And

Their Workman

Bhupendra Khushl Parmar
At & Post: Pardi, Ambheta
Taluka: Hasol
Dist.: Bharuch (Gujarat) ….Second Party (Workman)

For the First Party : Shri Mahendra K. Patel, Advocate

For the Second Party : None

AWARD

The Central Government/Ministry of Labour, New Delhi vide its order No. L-30012/53/2001 (IR(M)) dated 07.11.2001 , in exercise of powers conferred by clause (D) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Dispute act, 1947, referred the dispute for adjudication to Industrial tribunal Baroda on the terms of reference in the Schedule:

SCHEDULE

"Whether the action of the management of Geophysical party No. 36 and No. 25, ONBC Ltd, Baroda, in terminating the services of Shri Bhupendra Khusal Parmar without giving specific reasons is legal, proper and justified? If not, to what relief the concerned workman is entitled to and from which date and what other directions are necessary in the matter?"

2. In spite of notice from this Tribunal when the case record received on transfer by the order of M.O.L. from the court of state of Industrial Tribunal, the 2nd party workman failed to appear and to lead evidence in support of claim, whereas the 1st party is appearing to make contest in this case.

3. Earlier the 2nd party submitted statement of claim (Ext.3) when the case record was pending before Industrial Court , Vadodara, stating therein that he was working as unskilled workmen from 02.12.1997 in the 1st party organisation and was continuing before he was removed illegally on 18.05.1998 and he worked continuously for 120 day. Then he again worked in Geophysical party No. 36 from 10.12.1999 but again he was removed from work on 15.05.2000 and he completed 120 days of work. He asked the 1st party to reinstate him in the work but all went invain. Then raised industrial dispute. The action of the 1st party to terminate him without complying with the provision of section 25F is illegal and that the 1st party also contravened section 25H in not calling him for work and kept new person in the work. Claim is for reinstatement with back wages and any other relief to which he is found entitled.

4. The contention of the 1st party as per written statement in Ext.6 is that the 2nd party was engaged in field party on purely temporary basis and his service was to be terminated at any time. He was engage for specific work for specified period. The reference is not maintainable and the 2nd part workman is not entitled to any relief.

5. The w.s .was filed on 31.10.2003 since thereafter the workman side upon whom onus was to prove its case, failed to adduce evidence in this case. The statement of claim is not substantive evidence rather it is only pleading which requires proof on the basis of evidence, documents and oral. But the workman side did not adduce evidence in spite of long pendency of the case and also repeatedly proper notice to him.

6. The 2nd party workman has lost interest in this reference case so his claim as per statement without supportive evidence has no leg to stand.

As such this reference is dismissed. The terms of reference is answered in favour of the 1st party.

Let two copies of the award be sent for publication u/s. 17 of the I.D. Act to the appropriate Government.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 22 मई, 2014

का.आ. 1584.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ओ.एन.जी.सी. लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय अहमदाबाद के पंचाट (संदर्भ संख्या 55/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 12/5/2014 को प्राप्त हुआ था।

[सं. एल-30012/17/2009-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 22nd May, 2014

S.O. 1584.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 55/2010) of the Central Government Industrial Tribunal/ LabourCourt, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of ONGC Limited and their workman, which was received by the Central Government on 12/5/2014.

[No. L-30012/17/2009-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, AHMEDABAD

Present : BINAY KUMAR SINHA, Presiding Officer CGIT-cum-Labour Court

Ahmedabad, dated 21st November, 2013

Reference (CGITA) No. 55/10

Reference (I.T.C.) No. 26/10

1. The Group General Manager,
ONGC Ltd., Mehsana Asset, Palavasna,
KDM Bhavan, Palavasna,
Mehsana (Gujarat) -384002
2. M/s. B.S. Chaudhary & Co. ,
7 Urmi Shopping Centre,
Near B.K. Cinema , Workshop,
Mehsana (Gujarat)
3. M/s. Mahalaxmi Industrial Corporation,
1-112-A GIDC, Phase -1,
Mehsana (Gujarat) ……First Party

And

Their Workman

Shri Choudhary Jayantilal Ramsangbhai
Through the President,
Uttar Gujarat Kamdar Association
At & Po-Punasan, Karanvas Taluka
Mehsana (Gujarat) …..Second Party

For the First Party No. 1 : Shri Yogi Kishor Gadhia, Advocate (K.V. Gadhia Associates)

For the First Party No. 2 & 3 : None

For the Second Party (Union) : None

AWARD

The Central Government/Minstry of Labour, New Delhi vide its Order No. L-30012/17/2009-IR (M)) dated 03.06.2010 in exercise of powers conferred by clause (d) of sub-section (2A) of Section 10 of the I.D. Act, 1947 referred the dispute for adjudication to the tribunal on the terms of reference in the Schedule:

SCHEDULE

"Whether the action of the management of M/s. B.S Choudhary & Co. a contractor of Oil and natural gas Corporation Ltd., Mehsana, in terminating the services of Shri Choudhary Jayantilal Ramsangbhai w.e.f. 01.08.2004 is just and legal? What relief the workman concerned is entitled to and from which date?"

2. Notice to all the parties was issued on 25.06.2010 from Industrial Court, Ahmedabad when the case record was pending therein. The 1st party No.1 (ONGC Ltd.) principal employer appeared on 02.12.2010 executing Vakilpatra in favour of the K.V. Gadhia Associates, Advocates. Thereafter on receipt of record from Industrial Court to this C.G.I.T.-cum-Labour Court fresh notice was issued to party along with 2nd party Union. But all went invain neither the Union nor the concerned workman 2nd party appeared in this case in spite of several adjournment whereas 1st party No.1 attending the case on dates.

3. So there is reason to believe that the 2nd party Union and concerned workman are not interested to contest this reference. So the S.P. has failed to submit statement of claim. The 1st party contractors No. 2 & 3 also failed to appear in this case. Since the burden is upon the 2nd party workman/ Union to prove that termination of workman Jayantibhai was not justified by the contractor (M/s. B.S. Choudhary & com.) so the 2nd party has to face the consequences that there is no merit in the reference.

4. As such this reference is dismissed and the term of the reference is answered in favour of the immediate employer contractor (1st party).

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 22 मई, 2014

का.आ. 1585.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ओ.एन.जी.सी. लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 165/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12/5/2014 को प्राप्त हुआ था।

[सं. एल-30011/11/99-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 22nd May, 2014

S.O. 1585.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 165/2004) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of ONGC Limited and their workman, which was received by the Central Government on 12/5/2014.

[No. L-30011/11/99-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present : BINAY KUMAR SINHA, Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad, Dated 27th November, 2013

Reference : (CGITA) No-165/2004

Reference (ITC) No. 61/1999 (Old)

1. The Executive Director,
ONGC, WRBC, Makarpura Road,
Baroda (Gujarat)-390009

2. M/s. Shramik Co-opearative Ltd.
Priyadrashini , Op.. Novino,
Makarpura Road,
Baroda .....First Party

And

Their Workman

Through the Union
The General Secretary,
Gujarat Petroleum Employees Union
434/46, Gandhivas Naka
Gujarat Stadium Road, Sabarmati ,
Ahmedabad (Gujarat)-380005 ....Second Party

For the First party : Shri Kishor V. Gadhia, Advocate
Shri Mahendra K. Patel, Advocate

For the Second Party : Mr. V.S. Parashar , G.S (G.P.E.U)
Miss Santoshben Bhendwal,
General Secretary (G.P.E.U)

AWARD

The Central Government/ Ministry of Labour, New Delhi vide its Order No. L -30011/11/99-IR (M) dated 16.02.1999 in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Dispute Act, 1947 referred the dispute for adjudication to Industrial Tribunal, Ahmedabad (Gujarat) on the terms of reference in the Schedule:

SCHEDULE

"Whether the contract between the management of ONGC Ltd., Baroda and the contractor M/s Shramik Co-operative Ltd. is sham and bogus contract entered into between the parties as a camouflage to avoid the provisions of contract Labour (Regulation & Abolition) Act, 1970 and the notifications issued there under?"

"Whether the demand of Gujarat Petroleum employees Union, Ahmedabad in respect of 10 contractual workman namely S/Shri M.A. Malik , R.F. Thakor , Dilip Singh S., Umesh R. Khatik , N.M. Tadvi, A.G. Rathod, Ritesh B. Saini , Jyotikumar J. , Ajay R. Levedia and Greneralsingh Kalesingh engaged through the contractor M/s. Shramik Co-operative Ltd. in the establishment of ONGC Ltd. for treating these contractual workman as permanent employees of ONGC Ltd. in their respective category from the date of their joining either with ONGC Ltd. or with the contractor or from the date of prohibition of their employment as contract labour i.e. 08.09.1994 is legal and justified? If so, to what relief these 10 contractual workmen are entitled to and what other directions are necessary in the matter?"

"Whether the demand of the Union in respect of these above mentioned 10 contractual workmen for making the payment of scale of pay, DA, VDA, HRA and other fringe benefits including bonus/Ex-gratia at par with the permanent employees of the ONGC Ltd. is legal and justified? If so, to what relief these contractual workmen are entitled to and from which date?"

2. The case of the S.P. Union as per statement of claim (Ext.3) filed on 15.03.1999 is that the job of 10 workman involved, in the reference is of perennial nature, ONGC is a resourceful company and can pay legitimate time scale wages, perks and perquisite to workmen, but the ONGC by adopting dubious methods and by proper arrangement of contract, has deprived the workman from their legitimate benefits. There is no cooperative society in fact the workman of this reference are not member of cooperative society, they are not contractual workmen rather they have been working with ONGC as helper. The cooperative society is a brain child of ONGC to camouflage against the real employment of the workman with ONGC, Baroda. The concerned workmen have been driving different type of vehicles including vibrators of G.P. 61 of ONGC, Baroda. The vehicle driver all belongs to ONGC, Baroda involved in highly dangerous operations like explosion, earth vibrating etc. Log books are maintained for each vehicles driven by the workman, the workmen are doing the same and identical job as that wages without T.A., D.A., H.R.A. etc. The Govt. of India vide notification has prohibited the employment of contract labour in the category of drivers/ Helpers from 08.09.1994, but ONGC in the garb contractual worker in continuing to take works of Helper/Driver from the concerned workmen. On these scores, prayer is to allow the reference holding that the concerned workmen are the employees of ONGC Ltd. and for granting time scale of pay and other fringe benefits as that of direct and regular employees of ONGC Ltd. from the date they have been engaged in the G.P. 61 under ONGC, Baroda.

3. As against, this the 1st party No. 1(ONGC, Baroda) filed a reply (Ext.15) dated 15.09.1999 on preliminary objection of non-maintainability of the reference also praying therein to decide the preliminary issue and to dismiss the reference.

4. The 2nd party Union also filed rejoinder (Ext.19) to such preliminary objection of the ONGC (1st party No.1) that since reference order has been referred by the appropriate Govt. for adjudication and so no question of deciding preliminary issue ignoring the evidences and materials to be adduced by the parties in this case and so filing of preliminary objection by ONGC, Baroda is only

by way of delaying tactics and prayed to reject the preliminary objection of the ONGC, Baroda.

5. The ONGC, Baroda again submitted counter affidavit (Ext.20) to the rejoinder of S.P. Union making para wise comments.

6. Thereafter hearing argument and on submission of written argument (Ext.21) on behalf of the ONGC, Baroda (1st party No. 1 on 22.10.1999, an order dated 14.09.2000 was passed in reference I.T.C. 61/99 by Shri P.R. Desai, then member, Industrial Court, Ahmedabad rejecting the preliminary objection of ONGC (vide Ext.15) and the record was ordered to be kept on hearing of the reference on merit. The 1st party No. 1 challenged the order before the Hon'ble Gujarat High Court in S.C.A. No, 1726 of 2001 and interim order was passed by the Hon'ble court as to stay of further proceeding in reference I.T.C. No. 61/99 by order dated 07.03.2001.

7. Thereafter the case record received in this C.G.I.T cum Labour Court and numbered as Reference (C.G.I.T.A) no.165/2004 and notice were sent to the parties for appearance dates were being adjourned for filing w.s. by the 1st party. Then again due to vacant post of presiding officer of C.G.I.T.-cum-Labour Court, the record was transferred to the state Industrial Tribunal by the order of MOL, New Delhi on 09.04.2008 and again case record transferred to Industrial Court, Vadodara on 05.11.2009. And again the case record returned back to this CG.I.T.-cum-Labour Court by the order of M.O.L., New Delhi and received in the month of November 2010. The case was running for leading evidence by the 2nd party (Union).

8. It may not be out of place to mention that as per application of the 2nd party for interim relief (Ext.4) on 15.03.1999 along with filing of the statement of claim (Ext.3) on the same day, order bellow Ext. 4 was passed directing for maintaining status quo till 30.03.1999 and thereafter period of interim order of status quo was being extended from date to date and lastly it was extended vide order dated 16.07.1999 till filling w.s. and reply. But in this case the 1st party have not filed written statement to the statement of claim and the 1st party No. 2 (Contractor) neither appeared at any stage of this reference case nor filed reply/w.s.

9. The case record had been adjourned for 19/02/2014 leading evidence by the 2nd party. Then on 27.11.2013 the 2nd party Union through General Secretary of Gujarat Petroleum Employees Union Miss Santoshben Bhendwal appeared on behalf of the workman involved and filed an application (Ext. 27) for taking the matter on board today, another application (Ext.28) for producing the documents with list of workman who want to avail benefit under settlement. Another application Ext.29 was filed for passing order as to deleting names of 8 workman from the reference yet another application (Ext.30) was filed regarding remaining two workman N.M. Tadvi and Generalsingh Kalesingh to the effect that Shri N.M. Tadvi is now in the job with the G.E.B and Shri General Singh has attained the age of superannuation and so now entire reference is not maintainable as the matter is settled in the terms of fair wages policy.

10. Heard the General Secretary of the Gujarat Petroleum Employees Union and Shri Mahendra K. Patel, Advocate for the O.N.G.C. Ltd (1st party No.1) perused the record and the four applications filed on behalf of the 2nd party Union viz Ext.27.28.29 and 30 and also the three documents filed with list Ext.28 –Ext.28/1 is the list of 8 workmen of this reference case (1.) Mukhtar Hussian Malek (2.) Rameshbhai F. Thakor (3.) Dilipsingh Sudhirsingh (4.) Umesh Ramgulab Khatik (5.) Asfakal Ghulam Rasul (6.) Ritesh Banwarilal Soni (7.) Jyotikumar J. and (8.) Ajaybhai R. Levadia –their names appearing at Sl. No. 1, 2, 3, 4, 6, 7, 8 and 9 respectively in the order of reference, sent by the appropriate Govt. for adjudication Ext. 28/1 contains on letter head of the Union and signed by G.S Miss Santoshben Bhendwal and it was seen/noted by Shri M.K. Patel, Advocate for the 1st party No. 1. Ext. 28/2 is Zerox copy of the memorandum of settlement arrived at under section 12(3) of the I.D. Act, 1947 before Conciliation officer and Dy. Chief Labour Commissioner (Central), Ajmer on 18.07.2012, signed by the contractors, Employers of ONGC Ltd., Ahmedabad, Ankleshwar, Mehsana, Baroda, Cambay sub Asset western on shore Basin and contract workman represented through Gujarat Petroleum Employees Union, Ahmedabad and other Union –Petroleum Mazdoor Sangh, ONGC Mazdoor Sangh, EMS-Employees Mazdoor Sabha, Mehsana. The terms of settlement are 35% increase in wages of contract labour w.e.f. 01.04.2012 plus payment of enhance wage of Rs. 50 as per order dated 15.02.2001 of Dy. CLC (C) Mumbai, group insurance for contract labour, P.F. gratuity, leave with wages etc., ESIC coverage and for withdrawal of pending court/ Tribunal case relating to demand for regularisation and revision of wages. As per Ext.28/3 the eight contract workman have authorised Ms. Santoshben Bhendwal G.S. Gujarat Petroleum Union to represent in this reference case for filing withdrawal pursis (Ext.29).

11. As per Ext. 30 the General Secretary Ms. Santoshben Bhendwal on the letter head of the Union (G.P. EU) has prayed that out of remaining two contract workman –N.M. Tadvi has left the job of contract worker and has joined in the job with the G.E.B and Generalsingh has attained the age of superannuation (60 years) and so now the entire reference case is not maintainable since the matter is settled in terms of memorandum of settlement t (Ext.28/2) as to fair wages policy.

12. As per terms of settlement No. 1(i) after attaining the age of superannuation i.e. 60 years the contract labour can be removed. Since one of the contract workman namely

General Singh has already attained the age of 60 years, so he is out of courts. Likewise another workman N.M. Tadvi has joined in job with G.E.B. so he is also out of court in this reference case. The remaining 8 contract workman as per list Ext.28/1 and signing authority letter Ext.28/3 have accepted to get the benefits of the memorandum of settlement dated 18.07.2012 (Ext.28/2) so there remains no any disputed points to be adjudicated as per the schedule of the terms of reference.

13. Accordingly the withdrawal pursis (Ext.29) and pursis (Ext.30) regarding the reference case not maintainable are allowed and this reference is dismissed.

This is my Award.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 22 मई, 2014

का.आ. 1586.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैंगनीज ऑर (इंडिया) लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 42/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12/5/2014 को प्राप्त हुआ था।

[सं. एल-27012/4/2009-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 22nd May, 2014

S.O. 1586.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 42/2009) of the Central Government Industrial Tribunal/Labour Court, Nagpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Manganese Ore (India) Limited and their workman, which was received by the Central Government on 12/5/2014.

[No. L-27012/4/2009-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/42/2009 Date: 21.03.2014

Party No.1(a) : The Chairman-Cum-Managing Director, M.O.I.L., "MOIL Bhawan", 1-A Katol Rd., Nagpur-440013.

Party No.1(B) : The Mines Manager, Kandri Manganese Mines of MOIL, Tq. Ramtek, Distt. Nagpur.

Versus

Party No. 2 : The General Secretary, Bhartiya Manganese Mazdoor, Sangh, Chikla-Jode Sadak, PO-Gobarwahi, Teh. Tumsar, Distt. Bhandara.

AWARD

(Dated: 21st March, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of MOIL and their workman, Shri P.H. Mandale, for adjudication, as per letter No.L-27012/4/2009-IR (M) dated 27.01.2010, with the following schedule:-

> "Whether the action of the management Manganese Ore (India) Ltd., in dismissing the services of Shri Pradeep Harichand Mandale w.e.f. 25.07.2006 is legal and justified? What relief the workman is entitled to?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the workman Shri P.H. Mandale, ("the workman" in short) filed the statement of claim and the management of MOIL, ("party no.1" in short) filed the written statement.

The case of the workman as presented in the statement of claim is that in pursuant to his application dated 19.01.2000, the party no.1 by its order dated 04.05.2000, appointed him as a piece rated workman and there were stipulations in his appointment order, stating that he would be temporary and on probation for a period of six months and he was posted at Waka Mine and according to the direction given in the appointment order, he joined duties at Ukwa Mine and rendered unblemished service and worked to the satisfaction of his superior officers and during his service tenure, he came to be transferred from Ukwa mine to Kandri Mine and he worked at Kandri mine w.e.f. 19.07.2004 and though he performed his duties sincerely, party no.1 always found faults in his work and did not leave a single opportunity to falsely implicate him in commission of misconduct and to punish him by obtaining the statement of guilt from him and party no.1 always acted high handedly in colourable exercise of power and whenever, he refused to give any statement of guilt, he was threatened of losing his services and he had not committed any misconduct, much less one of absenteeism and while working at Kandri Mine, he was not keeping good health and was required to go to the doctor every now and then for treatment and due to the same, sometimes he was required to take leave and whenever he was remaining absent, party no.1 was

deducting wages for that day and party no.1 was aware of his ill health, as he was taking treatment in the hospital of the mine and the party no.1 submitted the charge sheet dated 25.03.2006 on the allegations of his remaining absent for 60 days during December, 2005 to February, 2006 without any intimation and permission amounting to misconduct as per clause 29 (B) (V)(IX)(XV) of the certified standing order and a departmental enquiry was contemplated against him and on 16.05.2006, the enquiry officer held the proceeding to go into the charges and he was pressurized by party no.1 to accept the charges and he having left with no other alternative had to accept the guilt and within a day's time, the entire departmental proceedings were completed and the enquiry officer submitted his report to the Authority and pursuant to the submission of the enquiry report, the disciplinary authority issued the 2nd show cause notice to him on 22.05.2006, directing to submit his explanation within a period of 10 days and he submitted his reply on 23.06.2006 and holding his reply not to be satisfactory, the disciplinary authority, by order dated 22.07.2006, dismissed him from services w.e.f. 25.07.2006 and the impugned order dated 22.07.2006 is not sustainable in law and cannot be termed as dismissal order, as the same was not signed by any authority, much less the Mine Manager of Kandri Mine and even if it is assumed that the dismissal order was signed by the mine manager as posed by party no.1, still then, the dismissal order is not sustainable since the same was signed by a person, who was not authorized to sign the said dismissal order as the Mine Manager was not the appointing authority and the appointing authority was the General Manager (Personnel) and the dismissal order passed by the person subordinate to the appointing authority is not sustainable.

It is further pleaded by the workman that on the very first day i.e. 16.05.2006 of the enquiry officer compelled him to admit the charges and to give his statement accordingly, failing which, he would have to face the consequences and the enquiry officer did not give him sufficient opportunity to put forth his case or even to take the assistance of a fellow worker to defend him in the enquiry and the enquiry was not conducted impartially and the same was vitiated and as such, the dismissal order which was based on the report of such illegal enquiry is not sustainable and is liable to be declared as illegal and even otherwise also, the dismissal order is bad in law, since the punishment of dismissal from service imposed upon him for the alleged misconduct of absenteeism is not proportionate and the same is shockingly disproportionate and his absence was for bona-fide reasons and cannot be termed as misconduct.

The workman has prayed to declare the impugned dismissal order dated 22.07.2006 as illegal and bad in law and to set aside and quash the same and to reinstate him in service with continuity and back wages.

3. The party no.1 in the written statement has pleaded inter-alia that the workman was appointed as piece rated worker and was posted at Ukwa Mine as temporary workman on probation of six months and the workman often absented from duty and during the period from January, 2001 to June, 2002, as many as four charge sheets were issued to the workman and after conducting departmental enquiry into the charges covered by each charge sheet, he was awarded punishment, since the charges were proved in each enquiry and on every occasion, by taking lenient view of the matter, it awarded minimum punishment of suspension only and the workman was transferred to Kandri Mine on his own request and at Kandri Mine also, the workman often absented from duty as was being done by him at Waka Mine and between July 2004 to November, 2005, the workman absented himself from duty, for which, two charges sheets were issued and enquires were conducted into each charge sheet and punishments of suspension for two days and one day were imposed respectively and since, the workman inspite of such punishments, absented himself from duty from December, 2005 to February, 2006 for 60 days, charge sheet dated 25.03.2006 was submitted against him and the workman admitted the charges in the departmental enquiry held for this purpose and as such, punishment of his dismissal from services was passed and he was dismissed from services w.e.f. 25.07.2006. It is also pleaded by party no.1that as the workman remained absent without any application for leave, his wages were liable to be deducted in accordance with clause 69 of the certified standing order and continuous absence from duty is a misconduct under the certified standing order and the departmental enquiry was conducted after following the due procedure as provided in the standing order and on the basis of the enquiry report, the disciplinary authority, the Mines Manager of Kandri Mine issued the final order and the enquiry conducted against the workman is just, fair and proper and the workman voluntarily, unconditionally and out of his free will admitted the charges before the enquiry officer and before the punishment was imposed, second show cause notice was issued to the workman on 22.05.2006, proposing the penalty of dismissal alongwith the copy of the enquiry report and the workman submitted his reply on 23.06.2006 to the second show cause notice, accepting his guilt and asking for pardon and the disciplinary authority after considering the reply submitted by the workman and his past conduct, by order dated 22.07.2006 dismissed the workman w.e.f. 25.07.2006 and the penalty of dismissal commensurate with the acts of misconduct and the workman is not entitled to any relief.

4. As this is a case of dismissal of the workman from services, after holding of a departmental enquiry, the fairness or otherwise of the departmental enquiry was taken for consideration as a preliminary issue and by order dated 06.01.2014, the departmental enquiry conducted against

the workman was held to be legal, proper and in accordance to the principles of natural justice.

5. At the time of argument, it was submitted by the Learned Advocate for the workman that the enquiry conducted against the workman is not fair and proper and the workman remained absent due to his illness and pregnancy of his wife and his absence was not deliberate and the document filed by the workman on 17.12.2012 clearly shows that the workman as well as his wife were taking treatment from the doctor of the hospital attached to MOIL and the management was well aware of these facts, but inspite of the same, charge sheet was issued by the party No.1 against the workman and the punishment of dismissal for the charge of absenteeism is shockingly disproportionate and the workman on the very first date of the enquiry was forced by the Enquiry Officer to accept the charges and the workman was a class IV employee and he is not literate and the Enquiry Officer should have given opportunity to the workman to engage some competent person to represent him and such opportunity was not given and for the same, the enquiry conducted against the workman and the punishment imposed against him is illegal and contrary to the principles of natural justice and the order of dismissal received by the workman was not signed by anybody and as such it has no meaning in the eyes of law and the dismissal order was issued by the Mine Manager, who is not competent to issue the same, as he is not the appointing authority of the workman and therefore, the order of punishment is liable to be set aside and the workman is entitled for reinstatement in service with continuity and full back wages.

6. Per contra, it was submitted by the Learned Advocate for the party No.1 that the departmental enquiry has already been held to be legal, proper and in accordance with the principles of natural justice by order dated 06.01.2014 and the findings arrived at by the Enquiry Officer are based on the evidence on record of the enquiry and the workman admitted the charges voluntarily without any influence or coercion and second show cause notice alongwith the copy of the report submitted by the Enquiry Officer was issued to the workman and in his reply, the workman again admitted the charges and requested for being pardoned and the punishment of dismissal awarded is proportionate to the misconduct proved and the same is not shockingly disproportionate and there is no scope for the Tribunal to interfere with the punishment.

In support of the contentions, the Learned Advocate for the party No.1 placed reliance on the decision reported in (2008) I SCC-224 (L & T Komastu Vs. Uday Kumar).

7. It is to be mentioned here that by order dated 06.01.2014, the departmental enquiry conducted against the workman has already been held to be legal, proper and in accordance with the principles of natural justice. It is also to be mentioned that at the time of deciding the preliminary issue of the fairness of the departmental enquiry, the submissions made by the Learned Advocate for the workman regarding the conduction of the departmental enquiry by an officer of party No.1, that the workman was forced to admit the charges and the workman should have been given opportunity to engage some competent person to represent him in the departmental enquiry have already been considered and answered, so, there is no question of considering the said submissions again.

8. So, far the submission made regarding issuance of the final order of dismissal by the Mine Manager is concerned, from the materials on record, it is found that the Mine Managers in charge of the Mines have been declared as the Disciplinary Authority and have been delegated with the power of imposing the major punishment in regard to the employees holding non-executive posts. Admittedly, the workman was an employee of party No.1 holding non-executive post, so, the issuance of the order of punishment of dismissal from services against the workman by the Mine Manager cannot be said to be illegal or improper. Hence, I find no force in the contention raised by the Learned Advocate for the workman on that score.

9. So far the question of perversity of the findings of the Enquiry Officer is concerned, on perusal of the materials on record and taking into consideration the submissions made by the Learned Advocates for the parties, it is found that the workman during the course of the departmental enquiry admitted the charges voluntarily and did not adduce any evidence in his defence. It is also found that the findings of the Enquiry Officer are based on the materials on record of the enquiry and not on any extraneous materials. So, the findings of the Enquiry Officer cannot said to be perverse.

10. The only question remains for consideration is as to whether the punishment imposed against the workman is so harsh or so disproportionate to the charge proved, that it warrants or justifies interference. It is well settled by the Hon'ble Apex Court in a number of decisions including in the decision cited by the Learned Advocate for the party No.1 that, " The discretion which can be exercised under section 11-A is available on the existence of certain facts like punishment being disproportionate to the gravity of the misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstances which require the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment."

Applying the principles enunciated by the Hon'ble Apex Court as mentioned above to the present case in hand, it is found that grave misconduct of habitual absenteeism has been proved against the workman in a properly conducted departmental enquiry and the past also, the workman had been found guilty of unauthorized

absenteeism several times and as such, the punishment of dismissal of the workman from services cannot be said to be harsh or shockingly disproportionate, so as to interfere with the same. Hence, it is ordered:

ORDER

The action of the management Manganese Ore (India) Ltd., in dismissing the services of Shri Pradeep Harichand Mandale w.e.f. 25.07.2006 is legal and justified.The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 22 मई, 2014

का.आ. 1587.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैंगनीज ऑर (इंडिया) लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 98/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12/5/2014 को प्राप्त हुआ था।

[सं. एल-27011/03/2007-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 22nd May, 2014

S.O. 1587.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 98/2007) of the Central Government Industrial Tribunal/Labour Court, Nagpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Manganese Ore (India) Limited and their workman, which was received by the Central Government on 12/5/2014.

[No. L-27011/03/2007-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No.CGIT/NGP/98/2007 Date: 28.03.2014

Party No. 1 : The General Manager (P),
Manganese Ore (India),
3, Mount Extension, Sadar
P.O. Box No. 34
Nagpur-440001

Versus

Party No. 2 : The Vice President,
MOIL Kamgar Sanghatan,
C/o Shri Ramavatar Devangan,
MOIL Staff Quarters,
Near Durga Mandir, Katol Road,
Nagpur-440013.

AWARD

(Dated: 28th March, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Manganese Ore (India) Ltd. and the 26 workmen (as per list attached), for adjudication, as per letter No.L-27011/03/2007-IR (M) dated 03.12.2007, with the following schedule:-

> "Whether the action of the management of Manganese Ore (India) Ltd. in not appointing 26 workmen of M/s. Bharat Gold Mines is in violation of the terms of settlement dated 20.01.2003 between the management of Manganese Ore (India) Ltd. and Rashtriya Mazdoor Sangh? If not, to what relief the workmen are entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the union, "MOIL Kamgar Sangathana", ('the union" in short), filed the statement of claim on behalf of the 26 workmen and the management of MOIL, ("Party No. 1" in short) filed their written statement.

The case of the 26 workmen as presented by the union in the statement of claim is that the party No.1 engaged several contract labourers in their project, "Bharat Gold Mines Limited" ("BGML" in short) at Balaghat and as the said project was closed, several workers were deprived of work, so the Secretary General of the union raised an industrial dispute on 02.01.2001, before the Assistant Labour Commissioner(Central), Chhindwara, ("ALC" in short) claiming absorption of all the workers engaged in BGML and the said dispute was discussed before the ALC on different dates and both the parties were advised to discuss and try to come to a mutual understanding, in the interest of the workers and the company and the dispute was discussed and it was submitted by the union that party No.1 should absorb all the workers engaged by BGML, as they had worked for more than 10 years in the said project and party no.1 was continuing the work, which BGML was carrying out and the said dispute was finally settled on 20.01.2003 and it was decided that the workers who were engaged by BGML would be observed, on the basis of physical condition, medical fitness and their working experience with particular reference to shaft sinking work etc and thereafter, party no.1 absorbed 92 workers of BGML on different dates in phased manner, but discarded the claim of the present workmen for their absorption, without any justification and without any lawful and reasonable cause and in view of the settlement dated 20.01.2003, the party No.1 was under obligation to absorb all the workers without any

discrimination, partiality and favoritism, but the party No.1 adopted the tactics of pick and choose, thereby adversely affecting the claim of the workmen and violated the terms of the settlement dated 20.01.2003 and though it (union) made representation to party No.1 for absorption of the workmen, party No.1 did not pay any heed, so, the dispute was raised by it before the ALC and on failure of the conciliation, failure report was submitted by the ALC to the Central Government and the Government in its turn referred the dispute to this Tribunal for adjudication and the party no.1 has engaged more than 500 to 1000 labours on contract basis for the work of permanent nature, who are engaged directly with the work of production of the company and therefore, it cannot be said that work and post are not available with the management and the workman are entitled to be absorbed in permanent post, in view of the settlement dated 20.01.2003.

The union has prayed for the absorption of the workmen in pursuance to the settlement dated 20.01.2003 with consequential benefits including arrears of salary.

3. The party No.1 in the written statement has pleaded inter-alia that a dispute was raised by the then recognized union, namely RMMS, over the issue of absorption of BGML workers engaged at their Balaghat Mines, before the ALC and after prolonged discussion, a settlement was arrived at u/s. 12 (3) of the Act between the parties on 20.01.2003 containing inter-alia the procedure and modalities for recruitment of the Ex-BGML workers on ad-hoc and temporary basis in the company and after the settlement, 91 workers, whose names appeared in the list enclosed with the settlement were given employment, after following the procedure laid down in the said settlement and those 92 workers were some of the workers, who had applied in response to a notification issued for the said purpose and their selection was made after ensuring of their satisfying the eligibility criteria and after giving employment to those 92 workers, the implementation of the settlement was completed and nothing remained to be done under the same and the said settlement was ceased to be in operation in terms of Section 19 of the Act.

It is further pleaded by the party No.1 that the union has not given the details about the 26 workmen, such as when they had been employed and period of work etc. and the settlement dated 20.01.2003 was for a specific purpose and it was not a declaration of policy to give employment to the BGML workers and the dispute raised by the union seeking benefit under the settlement dated 20.01.2003 is without any substance and (party No.1) is a public sector undertaking , under the administrative control of Ministry of Steel and is an "instrumentality of State" within the meaning of Article 12 of the Constitution of India and all the constitutional norms and limitations are as much applicable and binding on it and it has its own" Recruitment Rules" and if it was to accede the demand of the union, then it would have amounted to new mode of recruitment, outside the scope of its Recruitment Rules and after a lapse of so many years, it is not logically correct on the part of the union to raise the dispute, more so, after six years from the date of settlement and such an action will be violative of Articles 14 and 16 of the Constitution of India and such an action is not permissible and the workmen are not entitled to any relief.

4. In support of their respective claims, both the parties have led oral evidence, besides placing reliance on documents.

Shri Ramavatar Kanhaiyalal Devangan, the General Secretary of the union has been examined as a witness on behalf of the union. In his examination-in-chief, which is on affidavit, this witness has reiterated the facts mentioned in the statement of claim. However, in his cross-examination, this witness has admitted that the settlement dated 20.01.2003 was with the union RMMS and in the annexure attached to the settlement dated 20.01.2003, names of 92 persons were mentioned and those 92 persons were called for by the management for interview and they were recruited by the management and all of them were employed by MOIL and the 26 workmen are not members of their union and they have not filed any documents before this Tribunal in support of the engagement of the 26 workmen in BGML and BGML project has already been closed.

5. One Shri Nitin Yeshwant Pagnis, Chief(Personnel) of party No.1 has been examined as a witness on behalf of the party No.1. The evidence of this witness is also on affidavit. In his evidence, the witness for the party No.1 has reiterated the facts mentioned in the written statement.

It is to be mentioned here that the evidence of this witness has remained unchallenged, as none appeared on behalf of the union to cross-examine him and order of "No Cross" of the witness was passed on 16.01.2014. It is also necessary to mention here that as none appeared on behalf of the union on 16.01.2014, order was also passed to proceed with the reference exparte against the petitioner.

6. At the time argument, it was submitted by the Learned Advocate for the party no.1 that the Tribunal has no jurisdiction to adjudicate the reference and the settlement dated 20.01.2003 was with RMMS union for 92 workers as per the list attached to the said settlement and after employment of those 92 workers in phase wise, the settlement dated 20.01.2003 was completely implemented and the same did not survive and as such, there is no question of claiming employment by anybody else, basing on the said settlement and there is nothing on record to show that the 26 workmen were engaged in BGML and in absence of the same, they are not entitled to ask for employment and BGML has already been closed and apart from the same, in view of the principles enunciated by the

Hon'ble Apex Court in the decision reported in 2006 (4) SCC-1 (Secretary, State of Karnatak Vs. Umadevi) also, the workmen are not entitled to any relief.

7. Perused the record including the evidence adduced by the parties. There is no legal evidence on record to show that the 26 workmen were engaged in BGML. On perusal of the settlement in question, it is found that the same was specifically for the employment of 92 workers as per the list attached to the same. It is also found that the said settlement was for the employment of the workers having good working experience related to shaft sinking.

It is to be mentioned that no claim has been made by the union in the statement of claim that the 26 workmen were having good working experience relating to shaft sinking or that their names were included in the list or that the settlement was also in respect of the said 26 workmen. It is the admitted case that the 92 persons, whose names were included in the list attached to the settlement dated 20.01.2003 were employed by party No.1 phase wise in terms of the said settlement. So, there is no question of employment of the 26 workmen by party No.1 as per the settlement dated 20.01.2003 and the said 26 workmen are not entitled for employment under the settlement dated 20.01.2003. Hence, it is ordered.

ORDER

The action of the management of Manganese Ore (India) Ltd. in not appointing 26 workmen of M/s. Bharat Gold Mines is not in violation of the terms of settlement dated 20.01.2003 between the management of Manganese Ore (India) Ltd. and Rashtriya Mazdoor Sangh. The 26 workmen are not entitled to any relief.

J. P. CHAND, Presiding Officer

List of Workers attached to this case

(1) Shri Dharma Urkude Uike
(2) Shri Santosh Kumar Ghedudas Meshram
(3) Shri Chhunilal Ghudam Rathore
(4) Shri Rajendra Kumar Tikaram Brahme
(5) Shri Badanlal Natthulal Deshare
(6) Shri Pancham Tulsiram
(7) Shri Ashok Kumar Tularam Bhelave
(8) Shri Subrat Hanuman
(9) Shri Bhagchand Tarachand
(10) Shri Suresh Kunwarlal
(11) Shri Shrikumar Govind Prasad
(12) Shri Naresh Bakshi Shinde
(13) Shri Ganesh Chhunilal Jaiwanshi
(14) Shri Dhaniram Phoolsingh
(15) Shri Harilal Poonaji
(16) Shri Ramesh Kumar Tejlal
(17) Shri Lokpal Kanhaiya
(18) Shri Sunil Baldeo
(19) Shri Bhhopchand Haralal
(20) Shri Sakharam Mayaram
(21) Shri Saddu Mangal
(22) Shri Sukhlal Prataplal
(23) Shri Madanlal Bhaiyalal
(24) Shri Ishwari Prasad Raghuji
(25) Shri Tekchand Vikram Temre
(26) Shri Gulab Mohd. Noor Mohd.

नई दिल्ली, 22 मई, 2014

का.आ. 1588.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार हॉक कार्गो सर्विस प्राइवेट लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, दिल्ली के पंचाट (संदर्भ संख्या 49/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12/5/2014 को प्राप्त हुआ था।

[सं. एल-11011/1/2010-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 22nd May, 2014

S.O. 1588.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 49/2011) of the Central Government Industrial Tribunal/Labour Court-2, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. HAWK Cargo Service Private Limited and their workman, which was received by the Central Government on 12/5/2014.

[No. L-11011/1/2010-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, KARKARDOOMA, DELHI 110032

Present : Shri Harbansh Kumar Saxena

ID No. 49/11

Sh. Rajinder Prasad & Other

Versus

A.A.I, M/s. HAWK CARGO

NO DISPUTE AWARD

The Central Government in the Ministry of Labour vide notification No. L-11011/1/2010-IR(M) dated 16.06.2011 referred the following Industrial Dispute to this tribunal for adjudication :-

"Whether the action of the management of M/s. HAWK Cargo Service Pvt. Ltd. in terminating the services of workmen Sh. Rajinder Prasad Sharma and 9 others (list enclosed) is legal and justified? To what relief the workmen are entitled for?

On 08.07.11 reference was received in this tribunal. Which was register as ID No. 49/2011 and claimants were called upon to file claim statement within fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

After service of notice workmen/claimants not filed claim statement but Sh. Rajinder Prasad workman moved an application for withdrawal on 2910.2013. Wherein he mentioned as follows:-

1. That the above noted ID is pending adjudication before this Hon'ble Tribunal and fixed for hearing for today i.e 29.10.13.

2. That the claimant applicant wishes to withdraw the present case as a case between the same parties regarding same cause of action is pending adjudication before CGIT-I , Karkardooma Court and at the stage of claimants evidence and hence the applicant wants to withdraw the present case.

Prayer :—

In view of the submissions made above it is respectfully prayed that this Hon'ble Tribunal may be pleased to allow this application to permit the applicant to withdraw the present case. Other Workmen neither appeared nor filed claim statement nor management filed response.

On the basis of non-interestedness of workman. The proceeding of this case is not liable to be proceeded further. Hence proceeding of the case are liable to be dropped and no dispute award is liable to be passed. Which is liable to be passed.

No Dispute Award is accordingly passed.

Dated:-22/04/2014

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 22 मई, 2014

का.आ. 1589.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ओ.एन.जी.सी. लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, मुंबई के पंचाट (संदर्भ संख्या 108/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12/5/2014 को प्राप्त हुआ था।

[सं. एल-30011/10/2001-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 22nd May, 2014

S.O. 1589.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 108/ 2001) of the Central Government Industrial Tribunal/Labour Court-2, Mumbai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of ONGC Limited and their workman, which was received by the Central Government on 12/5/2014.

[No. L-30011/10/2001-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : K.B.KATAKE, B.A.LL.M, Presiding Officer

REFERENCE NO.CGIT-2/108 of 2001

EMPLOYERS IN RELATION TO THE MANAGEMENT OF OIL & NATURAL GAS CORPORATION LTD.

The Executive Director
O.N.G.C. Ltd.
Vasundhara Bhavan, Bandra (E),
Mumbai-400051.

AND

THEIR WORKMEN

The Secretary
Transport and Dock Workers Union,
P.D'mello Bhawan, P.D'mello Road,
Carnac Bunder, Mumbai.

APPEARANCES :

FOR THE EMPLOYER : Mr. G.D. Talreja, Representative.

FOR THE WORKMEN : Mr. A.M. Koyande, Advocate.

Mumbai, dated the 28th February, 2014

AWARD

1. The Government of India, Ministry of Labour & Employment by its Order No. L-30011/ 10 /2001-IR (M) dated 23.04.2001 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

"Whether the action of the management of ONGC Ltd., Mumbai in not accepting the demands issued by Transport and Dock Workers Union, Mumbai vide their Strike Notice dated 7/8/2000 (except demand No.3, 5, 16, 4 & 21) is legal and justified? If not, to what relief the workmen concerned are entitled to?"

2. After receipt of the reference, notices were issued to both the parties. In response to the notice, the second party union filed their statement of claim at Ex-10. According to the second party they are the employees of the first party engaged through various labour contractors to carry out their work which is regular in nature. The union is consistently demanding to abolish the practice of contract labour and for regularization of workers in the service of the first party who are engaged by the contractor. There was also writ petition filed before Hon'ble High Court wherein Hon'ble High Court has given direction to the first party to continue these contract labourers employed by respective contractors.

3. In the year 1991 union has served the first party with a strike notice demanding abolition of contract system and absorption of all contract labourers in the regular service of the first party. After the strike the first party signed MoU dated 15/01/1992 regarding wages and other service conditions. It was on the basis of wage structure of dock workers. The second MoU was signed between union on behalf of the contract workers and first party on 12/07/1995 on the basis of Dock Workers' Wages for the period 01/04/1994 to 31/12/1997. After expiry of the said period, the union served the management with fresh charter of demands dt. 01/12/1998 and made various demands including demand of wage revision, leave, etc. of contract labourers at par with respective corresponding category of regular employees of ONGC. There was no amicable settlement reached at. On the other hand the officials of ONGC resorted to various unfair labour practices. Therefore the union served a strike notice dated 07/08/2000 on the management. The dispute was taken to conciliation officer. As there was no settlement, the conciliation officer sent failure report to the Ministry. Therefore the Central Govt., Ministry of Labour & Employment sent the reference to this Tribunal. The union therefore prays to allow the reference and direct the management to grant the demands of the union.

4. The first party management vide its application Ex.-11 contended that the representatives of Transport and Dock Workers Union had boycotted the conciliation proceeding before the RLC (C) Mumbai. However other three unions of contract employees arrived at an amicable settlement on 29/12/2000, with the first party. The said settlement took place in conciliation proceeding before RLC (C), Mumbai. By this settlement the wages of the contract workmen were revised and other benefits were given to them. ONGC has given undertaking to that effect. Subsequently they received letter dated 14/05/2001 from Under Secretary, Govt. of India, Ministry of Labour that, in view of MoU arrived at between the Unions representing majority of contract workmen and first party that, there was no case for referring the demand for adjudication. The settlement was signed u/s 18 (3) of Industrial Disputes Act, 1947 on 29/12/2000, before RLC (C) in conciliation proceeding and the same is binding on all the contract workmen in the undertaking of ONGC Ltd. including the members of the second party union. Therefore they pray that the reference does not survive and the same be disposed of.

5. Unfortunately this application dt. 7/5/2002 may be due to over sight or by some misunderstanding, was not considered by my Ld. Predecessor. It seems that, inadvertently he passed the order that, the same will be heard alongwith the main reference. Thereafter the Written Statement was filed on behalf of the first party at Ex-15. By this exhaustive 18 pages-written statement the first party has categorically denied the claim of the union and explained all the facts and circumstances. The zest there of and the only relevant pleading is that, there was settlement signed on 29/12/2000 before RLC (C), Mumbai in conciliation proceeding. Therefore under Section 18 (3) of the I.D. Act 1947, the same is binding on all contract workmen engaged by the first party, including the workmen of second party union. Therefore the reference is not tenable. Thus they pray that the reference be dismissed.

6. The second party Union, vide its Rejoinder Ex-16 denied the averments in the written statement and repeated the contents in the statement of claim.

7. Following are the issues for my determination. I record my findings thereon for the reasons to follow:

Sr. No.	Issues	Findings
1.	Whether the reference is tenable in the light of Settlement dt. 29/12/2000 in conciliation proceeding?	No.
2.	Whether the action of management of ONGC Ltd., in not accepting the demand of Transport and Dock Workers Union Mumbai, vide its Strike notice dated 7/8/2000 is legal and justified?	Yes.
3.	What relief the union is entitled to?	They are not entitled to any relief.

REASONS

Issue No. 1 :

8. In the case at hand the facts are not disputed that the second party union as well as two other unions had given strike notice and had made number of demands in respect of their pay, allowances and other facilities and in respect of the terms and service conditions. Fact is also not disputed that there was conciliation proceedings before ALC (C) and second party union was also one of

the parties to the conciliation proceedings. It is also an admitted fact that, on 29/12/2000 there was settlement in conciliation proceeding before RLC (C). The said settlement was signed under Section 12 (3) of I.D. Act, 1947, by the management and other unions. The fact is also not disputed that, the said settlement was not signed by the second party union. Therefore according to the second party union the settlement is not binding on them. They have given away their other demands. However according to them few demands raised by them were not considered in the conciliation proceedings and they are pursuing for those few unfulfilled demands and this reference is thus well tenable.

9. In this respect the main and only contention raised on behalf of the first party is that, the settlement was signed before RLC (C) during the conciliation proceeding. Therefore u/s 18 (3) of the I.D. Act 1947, the said settlement is binding on all workmen including the members of the second party union though it is not signatory to the settlement. In the circumstances according to the first party the reference does not survive. According to it as the demands are resolved as per the settlement, thus the reference is not tenable. Hence they pray that the reference be rejected with cost. Short and the only question for my determination herein is, as to whether the settlement during conciliation proceeding signed by the other unions is binding on the members of the second party union also? The fact is not disputed that they were party to the conciliation proceeding however they had refused to sign the settlement.

10. In this respect it was submitted on behalf of the second party union that, few demands raised by them were not considered in the said settlement. Therefore the second party union has not signed the said settlement, thus it is not binding on them. Therefore, according to them the action of the first party was not justified, in not considering few of their demands mentioned in the reference. In support of his argument the Ld. Adv. for the second party resorted to the Kerala High Court ruling in Monthly rated workmen of Peirce Leslie & Co. Ltd., Cochin V/s. Labour Commissioner & Ors. 1967 I LLJ 789 wherein the Hon'ble Kerala High Court while interpreting the binding nature of Section 18(3) observed that;

> "……A settlement arrived at in the course of conciliation proceeding has an extended operation beyond the parties to the settlement. But that does not mean that any agreement arrived at in the course of conciliation proceeding without the concurrence of all the disputants is a settlement as contemplated by that Section. The very word "Settlement" will postulate such a concurrence."

11. In this respect it is submitted on behalf of the first party that, the settlement arrived at during the conciliation proceeding is not only binding on the members of the union who were parties to the settlement but is also binding on all the workmen working in the company and even the future workmen. In this respect Apex Court ruling can be resorted to, in Ramnagar Cane & Sugar Co. Ltd. V/s. Jatin Chakravorty & Ors. 1960 III Cri LJ 1384 (Vol. 61 CN 487). wherein, on the point Hon'ble Apex Court observed that;

> "That, inevitably means that the respondent would be bound by the said settlement even though they may belong to the rival union. In order to bind the workmen, it is not necessary to show that the said workmen belong to the union which was a party to the dispute before the conciliator. The whole policy of Section 18 appears to be to give an extended operation to the settlement arrived at in the course of conciliation proceeding and that is the object with which the four categories of persons bound by such settlement are specified in Section 18 sub-section 3."

12. Another Apex Court ruling is exactly on the same point in National Engineering Industries V/s. State of Rajasthan & Ors. AIR 2000 SC 469. The facts of that case were identical to the set of facts of the case at hand. In that case five unions were parties to the conciliation proceeding however four out of five unions of workmen have signed the settlement with the management in conciliation proceedings. The Hon'ble Court in that case held that the said settlement arrived at during conciliation proceeding had binding effect under Section 18 (3) of the Act not only on the members of the signatory union but also on the remaining workmen who were represented by the fifth union which, though, having taken part in conciliation proceedings refused to sign the settlement. In this ruling the scope and the binding nature of Sec. 18 (3) of I. D. Act 1947 is well explained by Hon'ble Apex Court.

13. The ratio laid down in the above referred case is squarely applicable to the case at hand as the facts are identical and the same point is before me for my determination. In the light of the ratio laid down in the above ruling which squarely attracts to the set of facts of the present case, I hold that the settlement signed in conciliation proceeding in this case is very well binding even on the members of the second party union who had refused to sign the same.

14. In the light of the scope and binding nature of Section 18 (3) and the interpretation by Hon'ble Apex Court it is clear that, the submissions on behalf of the second party is against the spirit of Section 18 (3) of I.D. Act. In the light of the above Apex Court rulings, the Kerala High Court ruling cited herein above by the Ld. Adv. for the second party does not extend any help to them. From the language of Section 18 (3) and clear and unambiguous interpretation thereof by Hon'ble Apex Court in the above referred rulings, I am convinced that, the settlement signed

before Conciliation Officer is binding on all the workmen including the members of the second party union. Thus I hold that the reference is not tenable. Accordingly I decide this issue no.1 in the negative.

Issue No. 2 :

15. In the light of above discussions it is clear that there was settlement between the management and two out of three unions. It is decided in issue no.1 above that the said settlement arrived at during the course of conciliation proceedings is binding on all workmen including the members of union who though had taken part in the conciliation proceedings and had not signed the settlement. As settlement is binding on all, in respect of their common demand, the question of considering the demands of these workmen separately does not arise. Therefore it needs no further discussion to decide this issue no.2 in the affirmative.

16. While parting with the award it would not be out of place to point out how this proceeding is unnecessarily protracted for more than 12 long years, which could have been disposed of within couple of months. Initially the first party had also given application(Ex-11) to that effect to dispose of the reference as there was settlement before conciliation officer and as per Section 18 (3) of I.D. Act it has binding effect on all the workmen. It seems that, my ld. Predecessor thought it usual application given merely to protract the matter or get the charges thereof from the company. Thus it seems he had passed the order 'This will be heard along with final hearing'. However it seems that, the point was not pressed seriously on behalf of the first party, as it is done after a gap of 12 years. This is the state of affairs, at the cost of ex-chequer the un-necessary litigation was being fought for over 12 years. The Company which is a Govt. undertaking must have spent few lakhs of rupees.

17. An Officer of the first party seems to have studied the case and realized that the litigation is being protracted unnecessarily for years together. Therefore the concerned officer has not only filed fresh application to dispose of this reference but has also passed purshis that they do not want to lead any evidence. This is an eye opening case. In last 12 years there was wastage of time and money of the company, the other side and valuable time of this Tribunal as well. The question is as to why the point was not pressed 12 years back as it is done now? Another serious question is; Who is responsible for the same? Next question is; How much amount is spent in these 12 years by O.N.G.C. on this unnecessary litigation? The ld. adv. of the first party had taken number of dates at every stage. He filed lengthy written statement, filed number of applications. He remained absent and 'no cross' order was passed and he got it set aside and cross examined the witness at length unnecessarily for about two-three dates. He has also filed affidavit of the witness of first party. Though late, the vigilant officer of the company took the right decision and filed the application and requested to stop further proceeding and also passed purshis that they do not want to lead any evidence as the reference can be disposed of only on law point. The sincere efforts of the concern officer, who gave full stop to this unnecessary litigation, must be appreciated. Such an officer deserves for the same. I would also like to recommend for some reward to her from the company. In fact it was the duty of the advocate concerned to press the law point even without filing pleadings. He failed to do it and the company was required to spend huge amount and valuable time unnecessarily.

18. In this respect I would also like to direct the company to enquire into the matter and to recover the unnecessary litigation expenditure over twelve years from the concerned who are responsible for protracting the matter unnecessarily. I would also direct the concerned officers of the Company and the Audit Department to verify other proceedings of the company and to check whether they are also protracted like the matter at hand. I remember in some other reference same set of company and advocate were directed to pay heavy cost for adopting delay tactics. Such tendencies should be checked firmly as it not only causes loss to the company or State Exchequer but also adversely affects the work of the Tribunal due to waste of its time in such matters. The Audit Department should take some stringent steps against such tendencies. I hope they would take proper care hence forth and I would not get any opportunity to write anything in this respect in future. Copy of this award be sent to Audit Department for necessary action and they should take necessary action to stop such practices causing harm to the company and this system as well. With this, I dispose of this reference and proceed to pass the following order:

ORDER

Reference stands rejected with no order as to costs.

Date : 28.02.2014

K. B. KATAKE, Presiding Officer

नई दिल्ली, 22 मई, 2014

का.आ. 1590.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बोकारो स्टील लिमिटेड (सैल) के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय 1, धनबाद के पंचाट (संदर्भ संख्या 9/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 12/5/2014 को प्राप्त हुआ था।

[सं. एल-43011/9/2011-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 22nd May, 2014

S.O. 1590.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 9/2013) of the Central Government Industrial Tribunal/Labour Court-1, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bokaro Steel Limited (SAIL) and their workman, which was received by the Central Government on 12/5/2014.

[No. L-43011/9/2011-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.1), DHANBAD.

IN THE MATTER OF A COMPLAINT U/S 33(A) OF I.D. ACT, 1947.

COMP. NO. 9/2013

(Arising out of Ref. 50/2011)

Ministry's Order No. L-43011/9/2011 IR(M)

D.C.Gohain

General Secretary
Jharkhand Karntikari Mazdoor Union ....Complainant

Vs.

C.E.O
M/s. Bokaro Steel Ltd. (SAIL)
Adm. Building
Bokaro Steel City Bokaro .....Opp. Party

Present : SRI RANJAN KUMAR SARAN, Presiding officer

Appearances :

For Complainant : Sri K. K. Mishra, Advocate
Sri D.C.Gohain Rep.

For Opp. Party : Sri D. Mukherjee Advocate

State : Jharkhand Industry:—Steel

Dated : 8/4/14

AWARD

2. The present complaint arises out of Ref. case No. 50/2011. The Reference case is for regularization of contract labourer who are rendering services to the management through contractors. It is submitted by the learned counsel for the workman, the management during the pendencey of the reference case is planning or even disengage some of the workmen. Therefore prays protection.

3. This Tribunal without passing any interim order in the reference case disposed the complaint case observing that the management shall not disengage any workmen who are rendering services to the management and who are listed workmen in the reference case . If it is so needed for any other reason, the management to remove the same, taking permission of this Tribunal.

This is my award

R. K. SARAN, Presiding Officer

नई दिल्ली, 22 मई, 2014

का.आ. 1591.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आंध्र सीमेंट्स लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 52/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 12/5/2014 को प्राप्त हुआ था।

[सं. एल-15025/1/2014-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 22nd May, 2014

S.O. 1591.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 52/2004) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Andhra Cements Limited and their workman, which was received by the Central Government on 12/5/2014.

[No. L-15025/1/2014-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Smt. M. VIJAYA LAKSHMI, Presiding Officer

Dated the 4th day of April, 2014

INDUSTRIAL DISPUTE L.C.No. 52/2004

Between :

Sri Y. Tirumala Rao,
D.No.55-4-38/2,
Sivalayam Street,
Isukathota,
Visakhapatnam – 530 002 .....Petitioner

AND

The Works Manager,
Andhra Cements Limited,
(Visakha Cement Works)
Durganagar Post,
Visakhapatnam – 530 029 ....Respondent

Appearances :

For the Petitioner : Sri B.V. Rao, Representative

For the Respondent : M/s. C. Raghu, M. Raghavender Reddy, N. Bojjaiah, S. Kanaka Raju, B. V. Anjaneyulu & Ch. Visweswara Rao, Advocates

AWARD

This is a petition filed by Sri Tirumala Rao, the workman/Petitioner invoking Sec.2A(2) of the Industrial Disputes Act, 1947 seeking for a declaration that the impugned oral termination dated 1.10.2003 is bad in law ab initio void and can not be justified and also for declaration that Petitioner is continued to be in service without interruption whatsoever and consequential reinstatement with continuity of service and attendant benefits.

2. The averments made in the petition in brief are as follows:

Petitioner was appointed as a car Driver of the respondent Management on 1.11.1999. He was not issued with any appointment order at that time. He continuously worked in that capacity. At the time of his appointment his wages were Rs.2000 pm as the other drivers who are similarly employed but drawing higher wages, he made repeated requests for enhancement of his wages and thereon the Management has raised his wages to Rs.2500 pm with effect from February, 2003. Whereas the wages of other drivers are Rs.8035 pm at that time and it was revised upward from time to time. The Management's indifferent attitude in ignoring his wage revision on par with other drivers made the Petitioner to approach statutory authorities. He was not even extended with statutory employment benefits like Provident Fund, ESI scheme, overtime wages etc.. His representations before factory inspectors ESI corporation, PF Organization and State Labour Department caused irritation to the Management resulting into summary termination of his services on 1.10.2003. The said termination is illegal, abintio void and arbitrary. It amount to victimization and unfair labour practice. Hence, the petition.

3. The Respondents filed counter with averments in brief as follows:

There is no relationship of employee and employer between the Petitioner and respondent. Petitioner is not a workman on the rolls of respondent company. Petitioner was never engaged/employed to do any work much less driving of the car of the industry. Respondent is a public limited company having its registered office at Hyderabad and a factory at Visakhapatnam engaged in the business of manufacture of cement. The officers of the respondent are entitled to certain benefits namely, HRA, servant allowance, car driver allowance etc., at certain rates depending upon the cadre/grade of the officer and the said allowances are reimbursed on submission of the relevant claim/voucher by the concerned officer. In the instant case Sri K. Pratap Varma, Regional Manager, Marketing engaged the Petitioner as his personal driver for the Ambassador Car No.ABU 9446. The contract of employment was between the said Sri Pratap Varma in his individual capacity and the Petitioner only. Salary was paid by said Sri Pratap Varma and he was reimbursed the said amount by the respondent company. Petitioner's name does not figure in the respondent company's rolls as he is not a workman of the respondent company. It appears that taking advantage of a certificate dated 25.1.2001 issued by said Sri Pratap Varma Petitioner is falsely contending that he is a workman of the respondent and he has been wrongly terminated from service by the respondent. Mr. K. Pratap Varma was never authorized nor he is competent to issue such certificate. The officers authorized by the respondent company to issue the certificates on the Personal Manager and Works Manager. Thus, the certificate dated 25.1.2001 has no relevance. Further, the said certificate does not give to any understanding that Petitioner worked for respondent company. There is no evidence to show that Petitioner is a workman. Therefore, question of adjudicating the matter does no arise. The contentions of the Petitioner that he has been engaged as car driver for the respondent on 1.11.1999 and continuously worked, that on repeated requests the Management raised his wages from Rs.2000 to Rs.2500 with effect from February, 2003 are all false. Since Petitioner is not a workman of the respondent company question of his services being terminated by the respondent does not arise. Petition is liable to be dismissed with exemplary costs.

4. To substantiate the contentions of the Petitioner he examined himself in his defence and marked Ex.W1 to W39. On behalf of the respondent Management MW1 was examined and no documents were marked.

5. Heard the arguments of either party.

6. The points that arise for determination are:

I. Whether the Petitioner is a workman and Whether there is relationship of employee and employer between the Petitioner and the respondent?

II. Whether the Petitioner is entitled for the reliefs sought for?

7. Point No. I :

It is the contention of the Petitioner that he has been working as Car driver for the respondent company since 1.11.1999 and that as he made representations to the relevant authorities complaining that the respondent is not extending various statutory benefits to which he is entitled to, his services were abruptly terminated by the respondent.

8. Whereas, it is the contention of the respondent that Petitioner never worked for the respondent as Car driver and that there is no relationship of employee and employer between the Petitioner and the respondent company. Further, they are contending to the effect that Petitioner has been the personal driver of one Sri K. Pratap Varma, the marketing manager of the respondent company, who was entitled for car driver allowance and that respondent company merely reimbursed the wages paid to the Petitioner by said Sri K. Pratap Varma towards Driver Allowance, to which said officer was entitled to.

9. Now, it is to be verified whether the contentions of the Petitioner are established or that of the respondent, by the evidence adduced on record.

10. In support of his contentions that he worked for the respondent company as car driver Petitioner could produce Ex.W38 and W39 the C-Book and Insurance certificate pertaining to the Ambassador Car bearing No.ABU 9446. A perusal of these two documents reveal that the Ambassador Car bearing No. ABU 9446 is registered in the name of Andhra Cements Ltd., i.e., respondent company. Thus, the said car is owned by the respondent company only but not by Sri K. Pratap Varma, the Marketing Manager of the respondent company. Respondent categorically admitted in their counter that Petitioner has been the driver of Ambassador Car No. ABU 9446, which means, Petitioner has been driving the car owned by the respondent company. Whereas it is not the contention of the respondent that Ambassador Car No. ABU 9446 has been provided for the personal use of Sri K. Pratap Varma the Marketing Manager. In the absence and proof of any such contention, what one can reasonably understand is that the car owned by the respondent company will be used for the benefit and purpose the said company's business only. Therefore, it is reasonable for one to understand that the person who was driving the said car was rendering services to the owner of the said car i.e., respondent company only, unless and otherwise is proved. No such proof is made available on record.

11. Further, Petitioner is relying upon Ex.W1, the certificate issued on the letter head of the respondent company by Sri K. Pratap Varma as respondent company's authorized signatory. The said certificate dated 25.1.2001 is to the effect that Petitioner has been working with the respondent company as car driver from 1.11.1999 on purely temporary basis and that his performance during the said period has been satisfactory.

12. It is an undisputed fact that Sri K. Pratap Varma has been the marketing manager of the respondent company. In their counter the respondent company has claimed that said person got no authority to issue Ex.W1 certificate and therefore the said certificate got no relevancy. While MW1 was under cross examination, he stated that Mr. K. Pratap Varma was given power and authority in writing and that he would produce the said written power and authority before the court. But he failed to produce any such document. The context of this reference to the written power and authority of Sri K. Pratap Varma, the Marketing Manager of the respondent is evidently made to establish limitations of the authority given to the said person. But by non-production of the said document on the part of the respondent inspite of MW1 undertaking before the court that he would produce the same, what one can reasonably infer is that there are no such limitations imposed. In this context, the fact that said Sri K. Pratap Varma has signed Ex.W1 as authorized signatory for the respondent company on the letter head of the respondent company is to be taken note of.

13. The above discussion of the material on record clearly makes out that Petitioner has been working as driver for the car owned by the respondent company and therefore, it is to be taken that he has been under the employment of the respondent. Further, respondent failed to establish that the car which Petitioner has been driving and which is owned by the respondent company has been kept for the exclusive use of Sri K. Pratap Varma and that Petitioner has been the personal driver of Sri K.Pratap Varma. These facts when considered together with the contents of Ex.W1 one can reasonably understand and believe that Petitioner has been driver of the respondent company and that there is relationship of employee and employer between them.

14. Further more, there are number of documents produced before the court by the Petitioner to show that he has been representing to the respondent company authorities time and again seeking for payment of wages to him on par with the other drivers of the respondent company. Ex.W12 is copy of inter office memo pertaining to the respondent company in which proposal for enhancement of marketing car driver's salary has been the subject dealt with. Petitioner is described as "working as car driver, marketing, since November, 1999 for ABU 9446,", in this document. It is further averred in this document that Petitioner's performance is satisfactory, that his salary was being reimbursed by vizag branch In-charge for Rs.2200 pm that the salary for other car drivers at factory increased by Rs.400 pm with effect from 1.2.2003 and that therefore, it was proposed to consider the case of this marketing car driver for enhancement of salary. On this proposal the Managing director of the company has passed an order enhancing the salary of the Petitioner by Rs.300 pm with effect from 1.2.2003. Ex.W13 is the consequential proceeding issued raising the pay of the Petitioner who has been described in this document also as, the marketing department's driver. Thus, it is clear that Petitioner was being treated as marketing department driver by the respondent company but not as the personal driver of one Sri K. Pratap Varma, as being claimed by the respondent in this proceeding.

15. Documents are produced by the Petitioner which can prove that even during the year 2003 he received wages for his services as driver. Thus, it can safely be held that Petitioner could discharge his burden of proving that he has been an employee of the respondent even after the year 2003 and that he stopped working since his services were abruptly terminated by the respondent. When once, such ample record is produced before the court by the Petitioner it is for the respondent Management, who will be in custody of the entire record which can show the nature of relationship between them and the Petitioner and the circumstances in which Ex.W12 and 13 have been issued whereunder Petitioner has been described as marketing department's driver, to produce such relevant record to establish their claim before the court. Their conduct in not producing even a piece of paper before the court indicates that, they are purposefully avoiding to produce the said record, because if they produce the same, the said record would be adverse to their contentions.

16. In view of the fore gone discussion of the material on record, it can safely be held that there is relationship of employee and employer between the Petitioner and respondent and that Petitioner is a workman.

This point is answered accordingly.

17. **Point No. II :**

In view of the finding given in Point No.I above, Petitioner is a workman. Evidently he is not working for the respondent since the year 2003. It is the contention that it happened so since his services were terminated by the respondent company abruptly with effect from 1.10.2003, since he was making representations to various and relevant authorities complaining that respondent company is not extending various statutory benefits to which he is entitled to. Whereas respondent company is denying the very existence of employee and employer relationship between the Petitioner and the respondent company. For the reasons given supra while deciding Pont No.1 above, the said contention is not acceptable. Making such contention, on the part of the respondent company which is not acceptable, itself indicates that respondent company is making efforts to evade their liability under law while retrenching the employee. Respondent has not complied with the mandatory requisites provided in Sec.25F of Industrial Disputes Act, 1947 while retrenching/removing the Petitioner/workman. With this regard there is no dispute. In such circumstances, as per the various binding legal precedents governing this area, Petitioner is to be ordered to be reinstated into service and in such circumstances, he is entitled for continuity of service and other attendant benefits as well. As to the back wages are concerned since he has not worked for the respondent company, since 1,10.2003, he is to be granted some compensation for denial of earning opportunity only. Rs.10000 is reasonable compensation so to be awarded.

This point is answered accordingly.

Result :

In the result, petition is allowed. The termination of services of the Petitioner as Driver of the respondent company with effect from 1.10.2003 is hereby declared as illegal and unjustifiable and the same is set aside. Petitioner shall be reinstated into service forthwith, with continuity of service and all attendant benefits, except for back wages. He shall be paid Rs.10000 (ten thousand rupees only) by the respondent towards compensation for denial of earning opportunity by abruptly terminating his services.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 4th day of April, 2014.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri Y. Tirumala Rao	MW1: Sri K. Giridhar

Documents marked for the Petitioner

Ex.W1:	Service certificate No.ACL:MKTG:VSP:2001 dt.25.1.2001
Ex.W2:	Photostat copy of WW1's representation to Respondent dt.20.7.2003
Ex.W3:	Office copy of Telegram to Regional Director, ESIC dt. 8.9.03
Ex.W4:	Office copy of Telegram to DCL, Visakhapatnam dt.8.9.2003
Ex.W5:	Office copy of representation to management by WW1 dt.14.9.03
Ex.W6:	Office copy of Telegram to management dt. 16.9.2003
Ex.W7:	Office coy of notice by DCL to management dt. 2.9.2003
Ex.W8:	Office copy of Telegram to management dt, 29.12.2003
Ex.W9:	Photostat copy of certificate of registration of Car No.ABU.9446
Ex.W10:	Photostat copy of particulars of vehicle in Ex.W9
Ex.W11:	Photostat copy of particulars of vehicle in Ex.W9 dt.5.8.2000
Ex.W12:	Photostat copy of ICM dt.15.3.2003 enchancing workman's salary by Rs.300 PM as approved by MD.

Ex.W13: Photostat copy of lr. No. ACL:ESTB:HO:2003 dt. 8.4.2003

Ex.W14: Photostat copy of lr. of approval for Ex.W13 dt. 9.4.2003

Ex.W15: Photostat copy of salary authorization order for the m/o May, 2003 dt. 6.6.2003

Ex.W16: Photostat copy of salary payment voucher for May, 2003 dt. 6.6.2003

Ex.W17: Photostat copy of salary payment voucher for April, 2003 dt. 5.5.2003

Ex.W18: Photostat copy of salary payment voucher for February, 2003 dt. 8.4.2003

Ex.W19: Photostat copy of salary authorization order for m/o February, 2003

Ex.W20: Photostat copy of salary payment voucher for February, 2003

Ex.W21 to

Ex.W34: Photostat copies of salary payment vouchers and salary authorization orders for different months and years

Ex.W35: Photostat copy of Gate pass cum challan issued by Respondent for CAr No. ABU 9446 dt. 20.6.2003

Ex.W36: Photostat copy of Gate pass-cum-challan issued by Respondent for CAr No. ABU 9446 dt.26.5.2002

Ex.W37: Photostat copy of Gate pass-cum-challan issued by Respondent for CAr No. ABU 9446 dt. 10.1.2001

Ex.W38: C-Book of the car No. ABU 9446

Ex.W39: Insurance certificate pertaining to car No. ABU 9446

Documents marked for the Respondent

NIL

नई दिल्ली, 22 मई, 2014

का.आ. 1592.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार हिन्दुस्तान जिंक लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 69/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12/5/2014 को प्राप्त हुआ था।

[सं. एल-29011/31/2002-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 22nd May, 2014

S.O. 1592.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 69/2004) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Hindustan Zinc Limited and their workman, which was received by the Central Government on 12/5/2014.

[No. L-29011/31/2002-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present : Smt. M. VIJAYA LAKSHMI, Presiding Officer

Dated the 18th day of February, 2014

INDUSTRIAL DISPUTE No. 69/2004

(I.T.I.D. No. 54/2002, transferred from Industrial Tribunal- cum-Labour Court, Visakhapatnam)

Between :

The General Secretary,
Visakha Zinc Workers Union,
C/o Hindustan Zinc Ltd.,
Jakkula Sambamurthy Bhawan,
Visakhapatnam – 530026. ...Petitioner

AND

The General Manager,
Hindustan Zinc Ltd.,
Zinc-Lead Smelter,
Visakhapatnam – 530 015. ...Respondent

Appearances :

For the Petitioner : Sri K. Bala Krishna, Advocate

For the Respondent : M/s. D.V. Subba Rao & D.V. Somayajulu,Advocates

AWARD

In pursuance of the claim made by the Visakha Zinc Workers Union (herein after be referred to as Petitioner Union) the Government of India, Ministry of Labour by its Order No. L-29011/31/2002-IR(M) dated 8.8.2002 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 against the management of M/s. Hindustan Zinc Ltd., for adjudication to the Industrial Tribunal-cum-Labour Court, Visakhapatnam which was transferred to this Court in view of the Government of India, Ministry of Labour's order No.H-11026/1/2001-IR(C-II) dated 18.10.2001 bearing I.T.I.D. No. 54/2002 and renumbered in this Court as I.D.No.69/2004 on such transfer.

SCHEDULE

"Whether the demand of the Visakha Zinc Workers Union, Visakhapatnam for arriving at per day wages on the monthly wages by dividing with that of 26 days instead of 30 days as done by the management of M/s Hindustan Zinc Ltd., Visakhapatnam for considering Sundays/Weekly Off days for the purpose of calculating continuous service in respect of workmen of Lead Unit who opted VRS is legal and/or justified? If not, to what relief the concerned Union is entitled?"

On receipt of the case file on transfer, this Tribunal has registered and numbered it as I.D. No.69/2004 and issued notices to both the Petitioner Union and the management.

2. Petitioner Union filed their claim statement with the averments in brief as follows:

The circular dated 26.12.2000 issued by the management relating to Zinc Lead Smelter in Visakhapatnam was not examined. The same circular dated 22.12.2000 was issued and copy of it was pasted in the notice board for ready reference. A copy of the Special Voluntary Retirement Scheme-II which will govern terms and conditions of voluntary retirement scheme if opted for is also pasted on the Notice Board. The management has given a very short period which is less than a week excluding holidays for exercising the option deliberately and thus, the workmen were to act in haste in exercising their option to retire from service. It was not a special voluntary retirement but, it was in fact depriving the workmen of their job. Workmen moved this court in this regard and the matter is now pending also before the Hon'ble High Court of A.P., being taken there by the management. The workmen are continuing to be in service in the Respondent company. They are entitled to all the benefits i.e., those which were clearly stated by the workmen in their representation to the ALC(C), Visakhapatnam in reference to the letter dated 12.12.2001. The workmen have filed the details like total number of workmen (102), their names, employee numbers, designation, date of appointment as casual, date of permanent appointment, ex-gratia for 60 and 30 days, computation of 240/120 days, travel allowance, ex-gratia for casual service, Gift 2000-2001, 20 years gift and the total. The Court may take notice of all these details as part of their claim statement and to answer the reference.

3. Respondents filed their written statement with the averments in brief as follows:

Closure of Lead Plant and removal of workmen working in that plant on voluntary retirement scheme as a result of closure was challenged by the union and the matter is stayed by Hon'ble High Court of A.P., Hyderabad in WP No.184379 of 2001 WP No. 33410 of 2001 & Batch (22 cases), WP No.7657 of 2002 to 7680 of 2002 filed by the management. The stay is in force. Therefore, the claim petition herein in which the claims made by the union are interlinked with the matters referred in the Writ petitions is not maintainable as it is sub-judice. The claim statement is not correct. Management has already submitted the true facts relating to the matter before the Tribunal. The circular dated 26.12.2000 was issued by the management after examining and exploring the possibility of re-deployment of the workmen working in the Lead Plant, in other plants of the company. Consequently closure with the approval of Government of India in terms of Sec. 25(O) of Industrial Disputes Act, 1947. The circular in question was issued in accordance with the conditions mentioned by the Government while according approval vide its letter dated 22.12.2000 for closure of the Lead Plant. A copy of the said Government's letter along with copy of Special Voluntary Retirement Scheme-II is pasted on the notice board of the company. The last day for receipt of the applications from the employees who opt for voluntary retirement scheme in terms of the said scheme is indicated as 24.1.2001 in the circular dated 22.12.2000 but not as 24.1.2001 as alleged in para-3 of the claim statement. Thus, more than a month's notice was given to the workmen to opt for the said scheme. But not less than the one week as claimed in by the workmen. It is a special scheme. As it was extended to the workmen working in other plants of the company. Since, the workmen in Lead Plant have been removed in terms of voluntary retirement scheme-II consequent to its closure and the workmen have received the benefits of said scheme, the question of their continuing in service of the company does not arise. Thus, they are not entitled to any benefits as claimed in the letter dated 12.12.2001 addressed to ALC(C), Visakhapatnam regarding the payment of ex-gratia and service computation of 240/120 days in respect of casuals who have been absorbed on permanent rolls. The terms of the voluntary retirement scheme are very clear that for the purpose of ex-gracia, the average days salary is worked out by dividing the monthly salary by 30 days and the service as casual will not be taken and only the date of their service as badli/permanent will be taken for the purpose of service computation. Interpretation of Sec.4(2) of the Payment Of Gratuity Act will not apply for calculation of ex-gratia compensation. For this purpose monthly wages are not required to be divided by 26 as claimed by the workmen union. Regarding the claim of disturbance allowance/transportation allowance, these payments are subjected to the rules of the company and have been paid to the workmen who complied with these rules. These are the matters to be decided in trial by way of evidence. so also, the claim with regard to payment of 20 years gift to those workmen who completed 20 years of service. Regarding the claim for payment of 2000-2001 Gift, this claim relates to performance linked annual incentive for the said year. The workmen

who opted for voluntary retirement during the year 2000-2001 are not eligible for this gift as per the policy taken by the management and the same was communicated to all concerned by way of circular dated 11.10.2001. Therefore, the workmen are not entitled for the same. The claim statement is not maintainable as the matter is sub-judice. Even if it is maintainable only on two issues as referred by the Ministry of Labour and Employment vide their letter No.L-29011/31/2002-IR(M) dated 8.8.2002 for adjudication. The other claims are to be rejected.

4. Thereafter with the permission of the Tribunal Petitioner union filed rejoinder on behalf of the workmen with the averments in brief as follows:

Petitioner union submit that option of the Lead Unit is not legal and justified and 30 days made by the management and non-taking into account the Sundays and weekly offs days for the purpose of calculation of continuous service in respect of workmen of Lead unit is not correct. The incidental issues in favour of the workmen may also be decided in their favour.

5. Thereafter with the leave of the court, Petitioner union filed additional claim statement which has been received on 27.12.2006.

6. Petitioner union filed additional claim statement with the averments in brief as follows:

The claim for the workmen do not affect judgement dated 18.2.2003 rendered in WP No. 25745 of 2001 and batch by Hon'ble High Court of A.P., Hyderabad. In the said writ petitions question of validity and impact of the Circular dated 24.12.2001 is not dealt with and therefore, it remains to be considered by this Tribunal. The demands made by these workmen are well within the scope of Industrial Disputes Act, 1947. It is well settled law that all the issues incidental to the aspects specified in the reference order for adjudication fall within the jurisdiction of the Labour Court or Tribunal as the case may be which are empowered to determine questions which go to the root of their jurisdiction and that on the determination of such points would depend the question as to whether the Labour Court or Tribunal has the jurisdiction to adjudicate upon the points referred to it for adjudication.

7. To substantiate their contentions for Petitioner union WW1 and WW2 were examined and Ex.W1 to W6 were marked. Since Respondent have not chosen to cross-examine the witnesses inspite of giving due opportunity, this courts has forfeited the right to cross-examination these witnesses viz., WW1 and WW2 by the management by virtue of orders dated 21.7.2011 and 7.2.2012 respectively. On behalf of the management MW1 was examined and Ex. M1 to M4 were marked.

8. Heard arguments of either party. Written arguments are also filed for either party and the same are considered.

9. The points that arise for determination are:

I. Whether the demand of the Petitioner union for arriving at per day wages on the monthly wages by dividing with that of 26 days instead of 30 days as done by the management of M/s Hindustan Zinc Ltd., Visakhapatnam is legal and justified?

II. Whether the demand of the Petitioner union for considering Sundays/Weekly Off days for the purpose of calculating continuous service in respect of workmen of Lead Unit who opted voluntary retirement scheme?

III. To what relief the concerned Union is entitled?

10. Point No. I:

As can be gathered from the material on record the Lead Unit of Hindustan Zinc Ltd., has been closed with the permission of Government of India and giving due notice to the union of workers as required under law. As per the conditions of the closure and to meet the requirement of law the management has formulated a Special Voluntary Retirement Scheme for the workers of the said closed Lead Unit and issued Ex. M2 notice. Ex. M2 is the said notice issued by way of circular dated 26.12.2000. This circular is annexed with Annexure 'B' containing the scope, applicability, definition of various terms of eligibility competent authority and application details, monetary benefits under its rules, procedure and some general issues which are all pertaining to Special Voluntary Retirement Scheme-II. As per this annexure 'B' it enumerates monetary benefits available under this scheme, gratuity for each completed year of service or part there off in excess of six months as admissible under the gratuity Act/Rules applicable to the concerned workman is provided for. That means the ex-gratia is to be calculated in terms of Gratuity Act, 1972 applicable. The validity of this circular cannot be disputed with, since it is issued in the interest of the workers only, but not otherwise.

11. The contentions of the Petitioner that Ex. M2 circular is not valid, as sufficient opportunity has not been granted to the workmen to exercise this option etc., are not correct. A month's time has been granted, which is more than sufficient. The same has been appreciated in the writ proceedings also.

12. Whereas while calculating the ex-gratia amount payable to the workmen the daily wage has been arrived at by the management by dividing the monthly salary by 30 days. It is the claim of the Petitioner that this calculation is incorrect and daily wage is to be arrived at for this purpose by calculating the monthly wages by 26 days as provided in the Gratuity Act.

13. Explanation to Sec.4(2) of the Payment of gratuity Act, 1972 reads that

"In the case of a monthly rated employee, 'the fifteen days' wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty-six and multiplying the quotient by fifteen."

14. In this context, it is to be stressed that as already observed above clause 7(4) of Annexure 'B' to Ex.M2 circular clearly says, that the gratuity is to be paid as admissible under the Gratuity Act, which means that it is the understanding of the management that ex-gratia amount is to be paid complying the provisions of Gratuity Act. If it is so, the contention of the Petitioner that calculation of daily wages done by the management is incorrect and that the same is to be arrived by dividing the monthly wages by 26 days but not by 30 days is to be accepted.

15. In their written arguments, the management has specifically claimed that Gratuity Act is not applicable to the present claim when it is specifically mentioned in clause 7.4 of Annexure 'B' to Ex.M2 circular, that the ex-gratia is to be paid as admissible under the Gratuity's Act, their contention in this regard now being made, can not be taken as an acceptable and probable contention. As already observed above, Gratuity Act is to be applied and therefore, while arriving at the daily wages of the monthly rated employees, the monthly wages are to be divided by 26 days but not by 30 days.

16. Thus, demand of the Petitioner union for arriving at per day wages on the monthly wages by dividing with that of 26 days instead of 30 days as done by the management of M/s Hindustan Zinc Ltd., Visakhapatnam is legal and justified.

This point is answered accordingly.

17. Point No.II:

It is the contention of the Petitioner that the Sundays and weekly off days are to be considered as part of service while calculating continuous service of the workmen of Lead Unit who opted for voluntary retirement scheme. The public holidays and weekly off days during the service of the workmen will certainly be part and parcel of the service of the workman as such, holidays will be earned by him by virtue of his service. They can not be taken as non-working days by any stretch of imagination. They are part of service only for all purposes and therefore they are to be counted for continuous service.

18. While defining continuous service in Sec.2A of the Payment of Gratuity Act, even the absence due to lay off, strike or lock out or cessation of work not due to any fault of the employee has been asked to be taken as continuous service. Whereas public holidays and weekly offs are the days earned by the workmen on full wages for the uninterrupted and continuous work done by him during which such days fall. Thus, they certainly will become part of continuous service.

19. In view of the fore gone discussion, it can safely be held that the demand of the Petitioner union for considering Sundays/weekly off holidays for the purpose of calculating continuous service in respect of workmen of the Lead Unit, who opted for voluntary retirement scheme is held as legal and justified, and thus the demand of the Petitioner union for considering Sundays/Weekly Off days for the purpose of calculating continuous service in respect of workmen of Lead Unit who opted for voluntary retirement scheme is held as legal and justified.

This point is answered accordingly.

20. Point No.III:

In view of the findings reached in Point Nos. I and II, the workmen of Lead Unit of Hindustan Zinc Ltd., Visakhapatnam who opted for voluntary retirement scheme as mentioned in Ex.M2 circular are entitled for arriving at their per day wage on the monthly wages, by dividing with that of 26 days instead of 30 days. Further, they are entitled for considering Sundays/weekly off days for the purpose of calculating their continuous service.

21. Apart from the above mentioned reliefs the Petitioner union is seeking for several other reliefs in their claim statement like, Travel Allowance, Gift 2000-2001, 20 years gift etc. It is the claim of the Respondent management that all these claims are outside the purview of the reference and therefore such claims can not be entertained. In this regard, it is the contention of the Petitioner that all these claims are questions raised in the reference and therefore they also can be entertained. This contention does not have any force. The reference is very specific and to the point. The two aspects which are covered by points No.I and II above, alone have been referred to for answering by this Tribunal under the reference. While answering this reference this court can not go beyond the scope of the reference. Further, at any stretch of imagination, payment of travel allowance, ex-gratia for casual service, gifts etc., can not be taken as incidental to the questions raised in the reference i.e., calculation of daily wages and consideration of Sundays and weekly off days for the purpose of continuous service. These are very distinct and different aspects and therefore they can not be entertained at all while answering the present reference.

This point is answered accordingly.

Result:

In the result, the reference is answered as follows:

The demand of the Petitioner union, for arriving at per day wages on the monthly wages of the workmen of Lead Unit of Hindustan Zinc Ltd., Visakhapatnam who opted for voluntary retirement scheme, by dividing the month with 26 days instead of 30 days is held as legal and justified. Respondent management shall make calculation of per day wages accordingly, while arriving at the ex-gratia amount to be paid to the said workmen and shall make payment accordingly.

Further, the demand of the Petitioner union for considering Sundays/weekly off days for the purpose of calculating continuous service in respect of workmen of Lead Unit who opted voluntary retirement scheme is held as legal and justified. Respondent management shall make calculation of continuous service of these workmen accordingly and shall make payment of various monetary benefits to the said workmen basing on such continuous service arrived at, only.

If payment of any monetary benefits are already made by arriving at per day wages and continuous service contra to the above findings, calculations shall be correctly made and the difference amount shall be paid to the workmen of Lead Unit who opted for voluntary retirement scheme forth with.

The claims made by the Petitioner union over and above the reference are hereby rejected as they are beyond the scope of the reference.

Award passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her and corrected by me on this the 18th day of February, 2014.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri Ch. Raghavendra Rao	MW1: Sri Karasi Rama Rao
WW2 : Sri Vegentla Vijaya Rao	

Documents marked for the Petitioner

Ex.W1:	Photostat copy of details showing total no. of workman and other particulars
Ex.W2:	Photostat copy of lr. to ALC(C), Visakhapatnam dt. 26.12.2001
Ex.W3:	Photostat copy of lr. to The General Manager, HZL, Visakhapatnam dt. 29.9.01
Ex.W4:	Photostat copy of lr. to ALC(C), Visakhapatnam
Ex.W5:	Photostat copy of lr. to ALC(C), Visakhapatnam dt.31.7.2001
Ex.W6:	Photostat copy of circular reg. Special voluntary retirement scheme-II dt.26.12.2001

Documents marked for the Respondent

Ex.M1:	Photostat copy of circular dt.26.12.2000
Ex.M2:	Photostat copy of Lr. No.L-29024/1/2000-IR(Misc) dt. 22.12.2000
Ex.M3:	Photostat copy of circular dt.11.10.2001
Ex.M4:	order passed in WP No.25475 of 2001 and batch

नई दिल्ली, 22 मई, 2014

का.आ. 1593.—औद्योगिक अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्वाति इंटरप्राइजेज के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 38/2009) प्रकाशित करती है जो केन्द्रीय सरकार को 12/5/2014 को प्राप्त हुआ था।

[सं. एल-43011/3/2008-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 22nd May, 2014

S.O. 1593.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 38/2009) of the Central Government Industrial Tribunal/Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s Swathi Enterprises and their workman, which was received by the Central Government on 12/5/2014.

[No. L-43011/3/2008-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT CHENNAI

Friday, the 28th March, 2014

Present : K.P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 38/2009

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Swathi Enterprises and their workmen)

BETWEEN

The Secretary Swathi Enterprises Thozhilalar Sangam Branch, Salem-636001	:	1st Party/ Petitioner Union

AND

1 Sri G. Mudiyarasan Managing Director, M/s Swathi Enterprises 6/215G, Arumugham Colony, Salem-636005	:	2nd Party/ Respondent
2. Sri G. Sridhar, Lease Holder, Swathi Enterprises, Umayalpuram Post, Attur Taluk, Salem	:	2nd Party/ 2nd Respondent

3. Sri C. Manikandan, Lease Holder, Swathi Enterprises Umayalpuram Post, Attur Taluk, Salem : 2nd Party/ 3rd Respondent

Appearance :

For the 1st Party/ Petitioner Union : M/s Arunachalam Associates, Advocates

For the 2nd Party/ 1st Management : M/s R. Parthiban, Advocate

For the 2nd Party/ 2nd Management : Set ex-parte

For the 2nd Party/ 3rd Management : Set ex-parte

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-43011/3/2008-IR(M) dated 27.02.2009 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

"Whether the action of the management of M/s Swaathi Enterprises in terminating 23 workmen (List enclosed) is justified? To what relief the workmen are entitled?"

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 38/2009 and issued notices to both sides. The petitioner and First Respondent entered appearance through their respective counsel and filed their Claim and Counter Statement respectively. Second and Third Respondent remained ex-parte.

3. The averments in the Claim Statement filed by the petitioner in brief are these:

The First Respondent is the Managing Partner of M/s Swati Enterprises, a quarrying organization and is also a licensed holder to quarry granite. He has been quarrying block granites from Umayalpuram Village of Salem District from 1988 onwards. The lease granted to the First Respondent for quarrying was renewed from time to time. The lease was renewed for a period of 20 years by order of the Labour Department dated 15.04.2004. The First Respondent has been quarrying from an area of about 2.11 hectares from 1988 onwards. Though a number of workers were employed by the Respondent continuously to do the quarrying work, they are paid monthly wages calculated at daily rated wages. Though the work was continuous, none of the workers are made permanent or regularized. The workers involved in this dispute have been working for the First Respondent in the quarry starting from the dates shown in the annexure to the Claim Petition. The First Respondent has been exploiting the workers by refusing to pay the statutory benefits. The First Respondent has failed to implement many of the provisions of Labour Welfare Act. Incorrect particulars regarding the workers are furnished by the First Respondent to the Labour Department. Due to such unjust treatment the workers formed an association, they were threatened to dissolve the association. The First Respondent dismissed 23 workers of the petitioner Sangam between 01.07.2006 and 10.07.2006. Seven of them were subsequently reinstated in service by the settlement of 17.08.2006. However, the 23 workers of the Sangam were again dismissed on 01.10.2006. In the meanwhile, the First Respondent issued notice for illegal transfer of the quarry run by the First Respondent. The request of the Petitioner Sangam to reinstate its members were not considered by the First Respondent. He appointed the Second Respondent as a benami contractor. When the workers of the Petitioner Sangam went to the quarry to do the work they were threatened and intimidated. The Second Respondent had also filed a suit against the members of the Petitioner Sangam. The First Respondent then cancelled his contract with the Second Respondent and entered into contract with the Third Respondent for mining at the quarry. Second and Third Respondents are only pseudo contractors. The service of the members of the Petitioner Sangam named in the annexure to the Claim Statement were terminated from 01.10.2006. The termination of the employees without notice pay would amount to retrenchment under Section-25F of the Industrial Dispute Act. The concerned workers are entitled to be reinstated in the service of the First Respondent with all benefits. An award may be passed accordingly.

4. The First Respondent has filed Counter Statement contending as follows :

The concerned workers were working as daily wage labourers with the First Respondent in connection with the mining operations carryied on in the patta land belonging to him. They formed a Sangam as Swati Enterprises Thozhilalar Sangam. They had not been working during the period from 1988 to 2004. The Government had granted permission to quarry granite from the patta lands of the First Respondent for a period of 20 years by order dated 15.04.2004. Quarry operations were re-started by the First Respondent on 07.05.2004 on the basis of this renewed lease. The concerned workers had joined with the First Respondent in its mining operations as daily wage workers after this. All the above 22 workers possess agricultural lands. During their employment in their agricultural lands, they would not come to work. The First Respondent had been maintaining statutory records like Wage Registers, Payment Registers, etc. From 2004 onwards nearly 20-30 workers were put to work everyday. The First Respondent was maintaining Attendance Registers, Payment Registers, etc in respect of each and every worker who came as daily wage earner. During 2006, the quarrying operations suffered huge loss. So the Respondent leased out quarrying to the Second

Respondent. When difference of opinion rose between the First and Second Respondent, the quarrying operation was closed by the Second Respondent. So he leased out the quarry to the Third Respondent. The Second and Third Respondents never engaged the concerned workers. The First Respondent had closed quarrying operations in his patta lands on 08.11.2011 and this was intimated to the competent authorities. The allegation that the First Respondent was trying to exploit the workers and was refusing to pay them the statutory benefits is not correct. The concerned workers had not worked for 240 days continuously in a calendar year. The averment in the Claim Statement that the termination of the employment would amount to retrenchment under Section-25F of the Industrial Disputes Act is not correct. The petitioner or its workers are not entitled to any relief. The petition is to be dismissed.

5. Respondents 2 and 3 are brought in the party array by the petitioner though they are not party to the reference. The case of the petitioner is that the First Respondent had leased the right to quarry on the basis of the permission granted to him initially to the Second Respondent and then to the Third Respondent. These two Respondents, though served with notice, had remained absent and had been set ex-parte.

6. The evidence in the case consists of oral evidence of WWs 1 to 3 and MW1 and the documents marked as Ext.W1 to Ext.W30 and Exts.M1 to Ext.M13

7. The points for consideration in the case are:

(i) Whether the action of the management in terminating the service of 23 workers is justifiable?

(ii) What is the relief to which the concerned workers are entitled?

The points

8. The petitioner, Swati Enterprises Thozhilalar Sangam is said to be affiliated to Salem District Granite Workers Union. The petitioner has raised the dispute on behalf of 22 workers said to be working in the quarry "Swati Enterprises" of which the First Respondent is the Managing Director. It is alleged by the petitioner that the First Respondent had terminated the service of 23 workers who are its members, whose list is annexed to the Claim Statement. According to the petitioner, though all these 22 workers had been working in the quarry belonging to the First Respondent for a considerably long period, they were not made permanent. They were being exploited by the First Respondent. Benefits legally due to them were being denied to them. On account of this, the petitioner union was formed. Earlier the First Respondent is said to have dismissed some workers but they were subsequently taken back on negotiation. Later the First Respondent has served notice of closure to the Union and had terminated these workers from service.

9. It is admitted by the First Respondent in the Counter Statement that the workers named in the list attached to the Claim Statement were working in his quarry. However, according to him they started to work only in 2004, after his permit for quarrying was renewed for a period of twenty years. According to the First Respondent, he ran into loss in the year 2006 and decided to transfer the quarry work to the Second Respondent. So he has served notice of closure to the Union. The lease in favor of the Second Respondent was subsequently terminated and the right to quarry was leased out to the Third Respondent. Now, this also seems to have come to an end. The stand of the First Respondent is that water had got inundated in the quarry and mining work could not be continued resulting in closure of the quarry in the year 2011. According to First Respondent, now no quarrying is going on in the quarry at all. He had surrendered the Sales Tax Registration Certificate and had given closure intimation to the authorities also.

10. In the list attached to the Claim Statement, the petitioner had given the date on which each of the concerned workers had started to work in the quarry of the First Respondent. The Secretary of the Sangam had been examined as WW1 and two workers were examined as WW2 and WW3 respectively. In the affidavit in lieu of chief examination furnished by these workers, they have reiterated their case in the petition. On the side of the First Respondent, MW1 who is said to have been working as Manager of the quarry has been examined.

11. The counsel for the petitioner has relied upon the decision of the Apex Court in STATE OF MAHARASHTRA VS. MOHAN LAL DEVI CHAND SHAH reported in AIR 1966 SC 189 to argue for the position that a mine defined in Minimum Wages Act includes a quarry also. However, it has not been disputed by the First Respondent that quarrying work is work in a mine and therefore when period of continuous service is being calculated under Section-25B(2) 190 days work will be sufficient to make out a period of one year of continuous service.

12. The Claim Statement refers to various dates on which the 22 workers in respect of whom dispute is raised has joined the First Respondent establishment. To prove his case the Secretary of the Petitioner Union and two workers are examined also. The Secretary examined as WW1 is not a worker. The Union was formed only in 2006 since the workers felt that their grievance are not attended to by the First Respondent. WW1 is not in a position to give the joining date of each of the workers. Though, WW2 and WW3, two of the workers are also examined they are also not in a position to state on which date other workers named in the list alongwith the Claim Statement have joined the Respondent. As it is apart from the assertion in the Claim Statement itself there is nothing to prove that the

concerned workers had joined the establishment on the respective dates stated in the Claim Statement.

13. It is admitted by the First Respondent in his Counter Statement that all the 22 workers were working in his establishment. According to him they started to work only after he restarted his quarrying operations on getting lease for quarry for a period of 20 years. He has stated in the Counter Statement that he started the work on 07.05.2012 after he got permission on 15.04.2004 and it was subsequently, the 22 persons had joined as Daily Wage Workers in the mining operations. Thus it is clear from the admission of the First Respondent that the 22 persons have started to work at least in May 2004. Of course, MW1 has stated in his affidavit that the workers have worked for a period of 5-7 years as Daily Wage Workers and there was no continuity. This witness has started to work with the First Respondent in the year 1991. However, even this admission of MW1 is not of any help for the reason that there is no way to find out on which date each of the workers have started to work. So the case of the First Respondent that they joined his establishment in May, 2004 is to be accepted.

14. There is a contention for the First Respondent that there is no evidence regarding the date on which each of the workers have worked last also. However, this contention is against his case in the Counter Statement. What he has stated in the Counter Statement is that due to financial loss he was not able to continue the quarrying operations and he had given lease to the Second Respondent to do the quarrying work. Ext. M4 is the notice of closure issued by the First Respondent on 01.10.2006. The very case of the petitioner is that they have been working with the First Respondent until 30.09.2006 and when they went for work on 01.10.2006, they were turned out. When this case is read alongwith with Ext. M4, it is very much clear that all the workers were terminated from service on 30.09.2006.

15. There is a contention for the First Respondent that the petitioner has not established that any of the workers had completed the required period of work days. He has referred to the decision of the Apex Court laying down the manner in which 190 days as per Section-25 D(1) or 240 days as per Section-D(2) of the Act is to be calculated. The Apex Court has stated in the decision MOHAN LAL VS. MANAGEMENT OF M/S BHARAT ELECTRONICS LTD. reported in AIR 1981 SC 1253 that the date of termination of service which is complained of as retrenchment is to be ascertained and after this it is to be ascertained whether the workman had rendered service for a period of 240 days or 190 days as the case may be within the period of 12 months prior to the date of termination. The counsel has also referred to the decisions of the Apex Court in RANGE FOREST OFFICER VS. S.T. HADIMANI reported in 2002 3 SCC 25 and RAJASTHAN STATE GANGANAGAR MILLS LTD. VS. STATE OF RAJASTHAN AND ANOTHER reported in 2004 8 SCC 161 in support of his argument that the burden lies on the workman to prove that he had worked the required days during the relevant period.

16. According to the First Respondent the workers were not continuity working for him. They used to be absent whenever they were having agricultural operations in their locality. In the absence of attending work continuously, they were not able to complete the required period to bring it under Section-25B(2) of the Act.

17. The very case of the First Respondent in the Counter Statement is that he has been maintaining Attendance and Wage Registers, etc. However, these documents were not produced by him at the initial stage of the case. At the fag end, he has produced certain attendance registers and wage registers and these were marked as Ext. M8 to Ext. M13. These are purported to be of the period from May, 2004 to May, 2006. It has been pointed out by the Counsel for the Petitioner that these documents could not be accepted as genuine documents. He has referred to the fact that all the pages of these documents are seen prepared at one stretch. In fact on a perusal of these documents it could be seen that though these are of a period of 2 years the entire thing is written in a single hand at one stretch. So the credibility of these documents is very much at stake. In spite of this fact it could be seen that even as per these documents most of the workers had completed work of 190 days preceding their date of termination on 30.09.2006. Even though it is stated in the Counter Statement that all the registers are maintained properly, the First Respondent has not produced the register pertaining to the period from May to September, 2006. Even though the genuineness of the document are doubtful the fact that even as per these documents the petitioners had been working for more than 16 days each month which will be sufficient to make out continuous service for one year would show that concerned workers had been working in the establishment not at the whims and fancy but were doing work regularly on almost all the working days except for absence at times. The counsel for the petitioner has stated that if the holidays are also calculated the period of 190 days to make out continuous service for one year would be made out even as per Exts. M8 to M13. However, this argument of the counsel could not be accepted since there is no case for the workers that they were getting wages on the holidays also. Only if wages were paid on holidays, those days could be calculated for the purpose of Section-25(B)(2) of the Act.

18. It has been pointed out by the Counsel for the Petitioner that for the purpose of reinstatement it is not necessary that the workers should have been in continuous service for a specified period. Once it is established that they were working in the establishment

and were turned out they will be entitled to be restored to the original position by reinstatement, it is pointed out.

19. The case of the First Respondent is that the quarries are not operated upon. It is admitted by the First Respondent that the Third Respondent to whom the quarry had been leased out had entrusted it back to him. However, according to him, he had not been operating the quarry after this. He has produced copy of a letter to Asstt. Sales Tax Commissioner marked as Ext. M5 to show that he has surrendered his Sales Tax Registration Certificate. According to him, closure intimation has been given to the respective authorities of the Government also. Ex. M6 is produced to show this. According to the First Respondent, water has got into the mine and quarrying had become impossible. He has also produced Ext. M7 series, certain photographs in support of this. These photographs are not proved at all. There is no evidence to show that these pertain to the quarry of the First Respondent. Apart from that the permission granted to the First Respondent for quarrying is in respect of more than 1.10.5 hectares of land. If a portion of the land has become in undated in water that does not mean the entire quarry could not be operated upon. Again, Ext. M5 and Ext. M6 are not sufficient to show that the quarry is closed. The case of the witnesses examined on behalf of the petitioner is that the quarry is still functioning. This evidence on the side of the petitioner is not rebutted by the Respondent. Though MW1 is examined on behalf of the First Respondent, this witness is not competent to speak about the present state of affairs. According to this witness, he had left the service of First Respondent on 01.10.2006. So he does not know what happened to the establishment after this date. He is not competent to speak about Ext. M5 and Ext. M6. The First Respondent who is the Managing Partner of the establishment has not come forward to give evidence. When the circumstances are considered there is no reason for the First Respondent to give up quarry operation. It has been pointed on behalf of the petitioner that the First Respondent has been trying to deny work to the concerned workers on one or other pretext after they have formed the union and it was in this attempt he had initially leased the quarry to the Second Respondent and then to the Third Respondent. Even as admitted by the First Respondent the quarry is now back in his hands. There is no acceptable evidence to show that it is now not functioning. So the concerned workers who were admittedly working with the First Respondent at the time when he is said to have leased the quarry to the Second Respondent is entitled to be reinstated. For reinstatement it is not necessary that the workers should have been regular workers. Even casual labourers are entitled to reinstatement if they are eligible.

20. It is clear that the workers had been in continuous service with the First Respondent for at least 2 years preceding the date of termination. There is no case for the First Respondent that any retrenchment compensation have been given to the concerned workers before they were terminated from service. If the First Respondent is not willing to reinstate the workers, he is bound to pay retrenchment compensation to them.

21. It view of my discussion above, the First Respondent is directed to reinstate the 22 workers named in the list attached with the Claim Statement. In the alternative, the First Respondent shall pay each of the 22 workers Rs. 25,000 towards compensation.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 28th March, 2014)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined :

For the 1st Party/ Petitioner Union : WW1, Sri P. Paramasivam
WW2, Sri A. Rajaji
WW3, Sri C. Asokan

For the 2nd Party/ Management : MW1, Sri Ramesh Kannan

Documents Marked :

On the petitioner's side

Ex. No.	Date	Description
Ex.W1	10.03.1990	'Registration Certificate of the Petitioner Union
Ex.W2	05.04.1990	Certificate of Firm Registration of the Respondent
Ex.W3	11.07.2006	Representation from the Employees to the 1st Respondent for their reinstatement (5 series)
Ex.W4	25.07.2006	Representation from the employees to the 1st Respondent for their reinstatement (5 series)
Ex.W5	17.08.2006	12(3) settlement in respect of reinstatement of an Employee
Ex.W6	16.09.2006	Demand of Bonus by the Petitioner Union to the 1st Respondent
Ex.W7	16.09.2006	Letter from the Petitioner Union to the Joint Commissioner (EPF) for registration of EPF scheme
Ex.W8	01.10.2006	Closure notice by Management under Section 25 FFA of ID Act alongwith Form Q
Ex.W9	04.11.2006	Letter from the Petitioner Union to the 1st Respondent
Ex.W10	13.12.2006	Affidavit and Injunction Petition filed by the 2nd Respondent in IA No. 1591 of 2006 in OS No. 535 of 2006 before the District Munsif, Attur

Ex.W11	-	Counter filed by the employees in the Swathi Enterprises in IA No. 1591 of 2006 in OS No. 535 of 2006 before the District Munsif, Attur
Ex.W12	10.01.2007	VAT Certificate issued by the Commercial Taxes Department to the First Respondent Management
Ex.W13	18.01.2007	Letter of Dy. Director Geology and Mines to the Petitioner Union under RTI Act
Ex.W14	22.01.2007	Statement of dispute raised under 2K before the Dy. Chief Labour Commissioner, Chennai on the dismissal of 23 employees with list of employees
Ex.W15	25.01.2007	Letter of the resignation of Anbumani, Member of the Union to the Petitioner Union
Ex.W16	19.06.2007	Letter from the Govt. of India under RTI Act, to the Petitioner Union furnishing list of workers of Management
Ex.W17	14.10.2007	Cancellation of the contract agreement between the 1st and 2nd Respondent
Ex.W18	15.10.2007	Contract agreement by the 1st Respondent with the 3rd Respondent
Ex.W19	24.10.2007	Reply of the management to the Asstt. Labour Commissioner (Central)
Ex.W20	10/2007	Suit filed by the 3rd Respondent in Os No. 428 of 2007 before the District Munsif, Attur
Ex.W21	06.11.2007	Affidavit and injunction petition filed by the 3rd Respondent in IA No. 1414 of 2007 in OS No. 428 of 2007 before the District Munsif, Attur
Ex.W22	12.01.2008	Representation of the Union to the Secretary to Govt. of India, Labour Department, New Delhi
Ex.W23	25.02.2008	Industrial Dispute raised under Section-2K of the ID Act,1947 by the petitioner before the ACL, Chennai against dismissal of 22 workers
Ex.W24	10.3.2008	Counter filed by the 1st Respondnet before the ACL, Chennai, Chennai-6
Ex.W25	05.06.2008	Failure report on conciliation
Ex.W26	15.09.2008	Contract agreement between the 1st and 3rd Respondent
Ex.W27	15.10.2008	Letter of Govt. of India to the Petitioner Union declining to refer for adjudication
Ex.W28	27.02.2009	Letter from the Govt. of India, Ministry of Labour referring the issue of dispute to Tribunal
Ex.W29	05.08.2011	Order passed in WP No. 7894 of 2009
Ex.W30	30.11.2011	Order passed in WA No. 2235 of 2011.

On the Management's side

Ex. No.	Date	Description
Ex.M1	08.03.1988	Lease for quarrying was granted by District Collector for a period of 5 years (Ex. M1)
Ex.M2	02.02.1994	Lease was granted by Govt. authorities for a period of 10 years (Ex. M2)
Ex.M3	15.04.2004	Lease was granted by the authorities for a period of 20 years (Ex. M3)
Ex.M4	01.10.2006	Notice of closure was issued by the 1st Respondent (Ex. M4)
Ex.M5	02.04.2012	Central Sales Tax Registration Certificate was surrendered by the First Respondent
Ex.M6	31.08.2012	Closure intimation was duly given to the respective authorities of the Govt. by the 1st Respondent
Ex.M7	29.11.2013	Photographs taken in the quarrying site
Ex.M8	-	Wage Register from May, 2004 to March 2005
Ex.M9	-	Attendance Register from April, 2005 to April ,2006
Ex.M10	-	Attendance Register from May, 2006 to Oct., 2006
Ex.M11	-	Attendance Register May, 2004 to March, 2005
Ex.M12	-	Wages Register from April, 2005 to April, 2006
Ex.M13	-	Wages Register from May, 2006 to October, 2006

नई दिल्ली, 22 मई, 2014

का.आ. 1594.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स डालमिया इंटरनेशनल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बैंगलोर के पंचाट (संदर्भ संख्या 18/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12/5/2014 को प्राप्त हुआ था।

[सं. एल-29011/62/99-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 22nd May, 2014

S.O. 1594.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 18/2000) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s Dalmia International and their workman, which was received by the Central Government on 12/5/2014.

[No. L-29011/62/99-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIUBNAL-CUM-LABOUR COURT, BANGALORE

Dated : 17th January, 2014

PRESENT : SHRI S. N. NAVALGUND, Presiding Officer

C. R. No. 18/2000

I Party

Shri A R M Ismail,
General Secretary,
Bellary Dist. Mining & Mineral Transport Workers Union,
No. 368, III Cross, Ramanjineyanagar,
BELLARY – 583 104.

II Party

M/s. Dalmia International,
Iron Ore Division,
Post Box No. 63, N C Colony,
HOSPET – 583 203.

Appearances :

I Party	:	Shri Muralidhara, Advocate
II Party	:	Shri B C Prabhakar/KGN Prasad, Advocate

AWARD

1. The Central Government on submission of Failure of Conciliation Report by ALC(C), Bellary on the dispute raised by Sh. A R M Ismail, President, Bellary District Mining and Mineral Transport Workers Union in connection with refusal of work to the contract workers by the Management Bharatnarayanana Haravu Iron Ore Mines of M/s. Dalmia International, Hospet vide order No. L-29011/62/99-IR(M) dated 24.01.2000 made this reference for adjudication with following schedule :

SCHEDULE

"Whether the action of the management of M/s. Dalmia International, in terminating the contract in respect of 5 contractors w.e.f. 12-8-1998/16-8-1998 is justified? If not, to what relief the contract workmen/ contractors are entitled?"

2. On receipt of the reference while registering it in CR 18/2000 when notices were issued to Sh. ARM Ismail, General Secretary, Bellary Dist. Mining & Mineral Transport workers Union, No. 369, III Cross, Ramanjineyanagar, Bellary – 583 104 (hereinafter referred as I Party) and to M/s. Dalmia International Iron Ore Division, Post Box No. 63, N C Colony, Hospet – 583 203 (herein after referred as II Party) they entered their appearance through their respective advocates and I Party filed his claim statement on 11.08.2004, whereas, the counter statement of the II Party under the signature of H Sathyanarayana, Officer in charge came to be filed on 31.01.2005.

3. The I Party in his claim statement asserts that the Bellary Dist. Mining & Mineral Transport workers Union is a trade union registered in the year 1995 under the Trade Unions Act, 1926 dedicated to the upliftment of workers employed directly or in the guise of contract labour in various mining establishments in the district of Bellary and the II Party being a mining establishment engaged in the mining and sales of Iron Ore had employed 100 workmen and another 100 workmen in the guise of Contract Labour under five labour contractors who did not possess valid licences from the competent authority under the Contract Labour (Regulation and Abolition) Act and the so called contract labours had been working for nearly 30 years in the II Party mines carrying on the work of breaking, sizing and stacking Iron Ore which is the perennial work who have been issued with identity cards, medical cards by the Mines Manager of the II Party and their work used to be supervised by the management as such they were all in reality the workmen of the II Party and the five contractors were sham. Therefore, the I Party Union immediately after its formation when took up the issue of those workers in the guise of contract workers to get the social and economic justice same was not being liked by the II Party/management conflict between the parties

developed which ultimately strained the industrial relations. In the meanwhile the Hon'ble Supreme Court since injuncted mining activities carried out in Forest limits the II Party/management declared lay-off in respect of the entire work force during 1997 and during this period the workmen joined the I Party Union and the management annoyed of the same discontinued the payment of lay-off compensation to the workmen and later the case before the Supreme Court when resolved II Party Management resumed mining operations from 13.04.1998 allowing only some technical staff to resume work and subsequently other permanent workers and even the so-called contract labours and immediately after resumption of the operations since some skirmishes took place between the management and the so called contract labours because of insulting and obnoxious behaviour of management functionaries towards the female workers, the management placed some 23 workmen under suspension without any justification which led to serious industrial relations problems as a result the workmen constrained to go on strike from 22.04.1998. It is further alleged as the workmen used to assemble at the foot of the hill which was far away from the mining operations at the top of the hill, the II Party Management obtained injunction from the Civil Court restraining the workmen from conducting agitations etc. near the mining and office premises and also filed criminal cases against the office bearers and active members of the Union and resorted to various kinds of unfair labour practices to coerce and intimidate workmen to give up their membership of the I Party Union and issued charge sheet on false and baseless allegations to several office bearers and activists of I party Union, initiated enquiry and dismissed them from service. It is further alleged the Central Government by order dated 09.03.1999 prohibited continuance of strike by the workmen which reached the hands of the I Party workman on 22.03.1999 and pursuant to the said order the workman called off strike and went to report for work but the so-called contract workers were not admitted to report for duty on the ground that the management had terminated the contract of the labour contractors during the period of strike and that their service were no more required. Then the I Party Union raised the dispute before ALC(C), Bellary and as he submitted Failure of Conciliation dated 12.11.1999 this reference being made. With these averments it is requested to pass an Award holding that the II Party was not justified in terminating the five contractors w.e.f. 12.08.1998/16.08.1998 so as to bring an end to the services of the workers of the contract labour who were in reality the workers of the II Party and that they are entitle to the benefits of reinstatement w.e.f. 25.03.1999, continuity of service, full backwages and other consequential benefits.

4. Interalia, the II Party in its counter statement contended that it being a Public Limited Company Registered under the Company Act with its Head Office at Dalmiyapuram, Tiruchy, Tamilnadu having the lease over an area of 819 acres since 1953 at Hospet which is known as BRH Mines was mining Iron Ore and transporting it by engaging about 105 workmen which include Office Staff, Drillers, Blasters, Heavy Equipment Operators, Dumper Driver etc., and had engaged five contractors viz., Sh. A. S. Dharmalinga, Sh. B. Arumugham, Sh. Suresh Kumar, Smt. Hanumakka and Sh. A Krishna for the work of sorting, sizing and stacking the Iron Ore who had valid licence under the Act and they had engaged in all 95 labourers paying wages to attend the said work and that those contract labourers were being covered under PF, the contractors were remitting the contributions and supervising their work as such the dispute espoused by the I Party in respect of those contract labours is not maintainable there being no relationship of Employee and Employer between those contract labourers and the II Party, the reference itself is bad. It is further contended the five contractors named above used to submit their bills every week in respect of contract works carried out by them and the II Party was making payment to the contractors on volume or weight basis and never on the basis of the labour engaged. It is further contended that the workmen of the II Party numbering about 105 including clerical staff organizing themselves had formed the Union under the name and Style of Iron Ore Workers Union and Registered the same in the year 1975 and the same was being recognized by it/management several settlements were entered into with the said union extending several benefits from time to time the last one being in the month of January 1996 which was in operation till October, 1998, whereas, the contract labourers numbering about 95 working under the above named five contractors had organized and formed a separate union for themselves in the name and style of "Dalmiya Employees Union" and were negotiating with their employers i.e., the contractors and entered into several Bipartite Settlement and Tripartite Settlement before the ALC(C) and for the first time in the year 1998 the I Party Union claimed some of its workmen including contract labourers having joined it started its illegal activities. It is further contended as per the order of the Hon'ble Supreme Court it stopped all Mining Activities from January, 1997 declaring lay-off and subsequently after persuasion took temporary permission to work for about six months from April, 1998 pending final decision and as the mining activity was not carried out for several months and it had to ensure safety by using excavators and bull dozers it lifted lay off to extent of workers needed for the said work from 13.04.1998 and after five days permitted all its workmen including the contract labourers to resume work from 18.04.1998 but abruptly on 21.04.1998 the members of the I Party Union including the contract labourers resorted to agitation without notice and blocked and closed the main gate of the mines and also gheraoed the officers, foremen and clerical staff blocking the entry and exit road to mines created chaous under the leadership

of Sh. ARM Ismail and came in the way of its mining operation and from 22.04.1998 all the five contractors unilaterally and without giving any notice stopped the work entrusted to them and later refused to take any action on their erring labourers and on the other hand stood behind their labourers by encouraging in their illegal acts, the dispute regarding justification of strike was referred for adjudication to this court which was numbered in C R 14/1999 and in that matter excepting the issue relating to subsistence allowance other issues involved were amicably settled and a Joint Memo was filed according to which the I Party Union gave up their claim for wages for the strike period. It is further contended that the contractors after stopping the work unilaterally without giving any notice and refused to commence their contract work even stopped coming to their Administrative Office aiding and abetting their striking labourers, after waiting for nearly four months left with no other alternative it terminated their contracts on 12.08.1998/16.08.1998. Thus, it is contended since the five contractors who had undertaken the work of sorting, sizing and stacking the Iron Ore due to the non co-operation and indulging in the illegal strike by the labourers engaged by them whose cause the I Party Union claims to be espousing having abandoned their contract work and having regard to the same it has terminated the contracts with them, if at all those contractors have not given work to their labourers or terminated their services in contravention of the provisions of Section 25(f) of Industrial Dispute Act, they have to proceed against them and that the II Party is in no way responsible for the same. Thus, the II Party pray for rejection of the reference.

5. After completion of the pleadings, when the matter was posted for evidence the learned advocate appearing for the II Party while filing the affidavit of Sh. P. M. Balasubramanian the General Manager reiterating the contents of Counter Statement and Sh. H. Sathyanarayana, Officer in Charge under whose signature the counter statement is filed examining them on oath as MW 1 and MW 2 respectively in the evidence of MW 1 got exhibited Ex M-1 to Ex M-114 and in the evidence of MW 2 Ex M-115 to Ex M-118 the detailed description of which are narrated in the annexure. Interalia, the learned advocate appearing for the I Party while filing the affidavits of Sh. Savarimuthy N C, Sh. Joseph claims to be workmen under the guise of the labour contract and of Sh. ARM Ismail, President of the I Party Union examined them on oath as WW 1, WW 2 and WW 3 respectively and in the evidence of WW 1 got exhibited Ex W-1 to Ex W-6 series, Ex W-7 and in the evidence of WW-3 Ex W-8 to Ex W-13 the detailed description of which are narrated in the annexure.

6. After close of the evidence and hearing of the arguments in part the learned advocate appearing for the I Party filed a Memo to the effect that in view of the closure of the operations of the mines w.e.f. 01.08.2000 the relief sought for by the I Party Union in respect of the labours worked under the guise of contract labours being restricted to payment of closure compensation under Section 25 (f) of the ID Act . To this memo the learned advocate appearing for the II Party filed his reply stating that for the detailed reasons stated in the counter statement the contracts with five contractors engaged for sorting, sizing and stacking the Iron Ore under whom the workmen for whose cause the I Party has raised dispute being terminated in the year 1998 itself i.e. on 12.08.1998/ 16.08.1998 in respect of them while closure of the operations of the mines w.e.f. 01.08.2000 there was no obligation for the II Party to pay closure compensation to them as provided under Section 25(f) of the ID Act.

7. With the above pleadings, evidence and Memo filed by the I Party counsel the arguments addressed by the learned advocates appearing for both sides were heard.

8. Since the reference schedule is as to whether the action of the management of M/s. Dalmia International, in terminating the contract in respect of 5 contractors w.e.f. 12.08.1998/16.08.1998 is justified, the pleadings, evidence adduced by the I Party and the arguments addressed by the learned advocate for the I Party that the Contractors where Sham and that the labourers for whose cause the I Party has raised this dispute were actually the employees/ workmen under the II Party is outside the scope of this reference and I may say this is a futile exercise on the part of the I Party. It appears in this connection after completion of the pleadings and the examination-in-chief of WW 1 on my learned predecessor expressing his opinion that there is no scope to consider the five contractors were Sham, the learned advocate appearing for the I Party came up with an application on 05.07.2006 under Section 11 of the ID Act to get corrigendum to the Order of Reference in the place of the present schedule as to "Whether the Second Party/Management is justified in refusing work to the contract labourers engaged by the five contractors w.e.f. 12.08.1998/16.08.1998 and if not, what relief the Contract workmen/Contractors are entitled?" my learned predecessor having regard to the objection filed to the said application after hearing the arguments addressed by the learned advocates for both sides passed a detailed order dismissing the said application giving reasons as to why this tribunal cannot ask the ministry to issue such a corrigendum by order dated 19.02.2007 and forwarded the copy of the said order to the Central Government by way of reminder to the two representation allegedly made by the I Party Union dated 10.04.2004 and 13.09.2002 but the Central Government since did not issue any corrigendum or gave any reply the schedule to the reference remained as it is as to "whether the action of the management of M/s. Dalmia International, in terminating the contract in respect of 5 contractors w.e.f. 12.08.1998/16.08.1998 is justified? If not, to what relief the contract workmen/ contractors are entitled?" the only point that arises for my

consideration is "Whether the II Party is justified in terminating the contract in respect of the five contractors w.e.f. 12.08.1998/16.08.1998 and if not to what relief the contract workmen are entitled to?" .

9. The II Party which has pleaded/contended in its counter statement that it had entrusted the work of sizing, sorting and stacking the blasted Iron ore to five contractors viz., Sh. A. S. Dharmalinga, Sh. B. Arumugham, Sh. Suresh Kumar, Smt. Hanumakka and Sh. A. Krishna were making payments to them on volume or weight basis and never on the basis of the labour engaged by them and they in turn used to make payment to the labourers engaged by them for the said work besides swearing to the same by the General Manager produced the documentary evidence like Bills submitted by the contractors Ex M-115, 116, 117 and 118 series and extract of B Registers maintained by the said contractors regarding distribution/payment of wages to the labourers employed by them at Ex M-70 to Ex M-78. Further in support of their contention that the workers engaged by them when indulged in the illegal strike and they could not convince them to work and on the other hand stood support for them and abandoned their contract unilaterally and refused to take any action against their erring labourers left with no alternative they terminated their contracts on 12.08.1998/16.08.1998 besides swearing to the said fact by the General Manager they have produced the termination letters issued to them at Ex M-110 to Ex M-114 which suggest that they terminated the contract with A. S. Dharmalingam, A. D. Suresh Kumar, Smt. Hanumakka we.f. 12.08.1998 and of Sh. Arugmugam and A. Krishna w.e.f. 16.08.1998 wherein they have incorporated the same reasons for terminating their contracts. These contractors having not raised any voice or dispute against termination of their contracts it has to be presumed that they have accepted it. When the contractors engaged for the work of Sizing, Sorting and stacking the blasted iron ore did not take any action against the labourers engaged by them for the said work when they indulged in illegal strike and on the other hand indirectly supported them, there was no other go for the II Party/management to terminate their contracts as done in the present case. Therefore, absolutely I find no error being committed by the II Party in terminating the contracts of five contractors under whom the labourers for whose cause the I Party Union has raised this dispute. As already adverted to by me above the I Party without making any pleading as to how the termination of those contractors is not justified went on to plead and lead evidence the said contractors were sham and the labourers engaged for the work of sizing, sorting and stacking were direct labourers under the II Party itself for which there is no scope as already adverted to by me having regard to the schedule of the reference. Therefore, the I Party failed to rebut the evidence adduced by the II Party justifying their action of terminating the five contractors engaged by them for the work of sizing, sorting and stacking the blasted Iron Ore. When these labourers were working under five contractors and were paid wages by them if at all after their contracts with II Party were terminated they failed to provide them work or terminated their services without compliance of the mandatory provisions of Section 25(f) of the act their remedy in that regard is against the contractors and not against the II Party which may be a Principle Employer when they were working or engaged in their Mines. Since the evidence on record suggest the II Party had terminated the contractors w.e.f. 12.08.1998/16.08.1998 admittedly the operation of the Mines by the II Party came to be closed w.e.f. 01.08.2000 as on that date the contract labourers were not working in the mines of the II Party as such there was no obligation on their part to pay or see to pay the compensation required to be paid as contemplated under Section 25(f) of ID act as such even as requested for in the Memo filed by their counsel on 14.02.2011 there cannot be any direction to the II Party to pay them closure compensation under Section 25(f) of the ID Act to these contractors labours. In the upshot of the above, I arrived at conclusion that the management of M/s. Dalmia International is justified in terminating the contract in respect of five contractors engaged by it for the purpose of sizing, sorting and stacking the blasted iron ore w.e.f. 12.08.1998/16.08.1998 and that the labourers engaged by them are not entitle for any relief from the management of M/s. Dalmia International. In the result, I pass the following :

ORDER

The reference is rejected holding that the action of the management of M/s. Dalmia International, in terminating the contract in respect of 5 contractors w.e.f. 12.08.1998/16.08.1998 is justified and that the workmen engaged by those contractors are not entitle for any relief from the management of M/s. Dalmia International.

(Dictated to U D C, transcribed by him, corrected and signed by me on 17th January, 2014)

S. N. NAVALGUND, Presiding Officer

ANNEXURE–I

Witnesses examined on behalf of Management:

MW 1 – Sh. P. M Balasubramanian, General Manage

MW 2 – Sh. H. Sathyanarayana, Officer-in-charge

Witnesses examined on behalf of Workman:

WW 1 – Sh. L. C. Savarimuthu

WW 2 – Sh. Joseph

WW 3 – ARM Ismail

Documents exhibited on behalf of the Management:

Ex. M-1 : Letter dated 31.05.1996 of ALC returning the amended Certificate of Registration

Ex. M-2 : Registration Certificate bearing No. 7/71 dt. 20.9.1971 issued by ALC, Bellary to the Second Party – Dalmia International, under Contract Labour (Regulation & Abolition) Act, 1970

Ex. M-3 : Letter dated 5.1.1998 issued to Smt. Hanumakka by the Licensing Officer and the Asst. Labour Commissioner, Renewing the Licence upto 30.1.1999 and Licence

Ex. M-4 : Letter dated 5.1.1998 issued to A. S. Dharmalingam by the Licensing Officer and the Asst. Labour Commissioner, Renewing the Licence upto 27.1.1999 and Licence

Ex. M-5 : Letter dated 12.3.1998 issued to Sri Suresh Kumar by the Licensing Officer and the Asst. Labour Commissioner, Renewing the Licence upto 11.4.1999 and Licence

Ex. M-6 : Letter dated 12.3.1998 issued to B. Arumugam by the Licensing Officer and the Asst. Labour Commissioner, Renewing the Licence upto 8.4.1999 and Licence

Ex. M-7 : Letter dated 12.6.1997 issued to A. Krishna by the Licensing Officer and the Asst. Labour Commissioner, Renewing the Licence upto 10.7.1999 and Licence

Ex. M-8 : Police Complaint dated 22.04.1998 lodged by the second party with the Circle Inspector of Police, Sandur, regarding Gherao, detention

Ex. M-9 : FIR No. 657505 dated 22.04.1998

Ex. M-10 : Police Complaint dated 23.4.1998 lodged by the Second Party with the Circle Inspector of Police, Hospet regarding Apprehended Violence

Ex. M-11 : Police Complaint dated 23.4.1998 lodged by the Second Party with the Sub-Inspector of Police, Gadiganoor seeking Police Protection

Ex. M-12 : Police Complaint dated 29.04.1998 lodged by the second party with the Circle Inspector of Police, Sandur complaining Blockade of way at PKL

Ex. M-13 : Police Complaint dated 7.5.1998 lodged by the Second Party with the Circle Inspector of Police, Hospet regarding Blockade at Hospet Office, N C Colony

Ex. M-14 : Police Compliant dated 17.5.1998 lodged by the Second Party with the Circle Inspector of Police, Hospet regarding Illegal Blockade at Hospet Office and Locking up of the Premises of the Second party

Ex. M-15 : Police Complaint dated 19.5.1998 lodged by the second party with the Sub-Inspector of Police, Inspector of Police, Gadiganur, regarding threatening the workers not to allow the Mines for work

Ex. M-16 : FIR No. 0423413

Ex. M-17 : Police Complaint dated 19.5.1998 lodged with Police Sub Inspector, Gadiganur and FIR

Ex. M-18 : Police Complaint dated 2/11-5-1998 lodged by the Second Party with the Sub-Inspector of Police, Gadiganur, regarding blockade at PKL Village near Ganesh Temple Premises

Ex. M-19 : FIR No. 653244 dated 11.6.1998

Ex. M-20 : Police Complaint dated 4.7.1998 lodged by the second party with the Circle Inspector of Police, Hospet regarding Picketing at Hospet Office of the Second Party by the first party union from 6.7.98

Ex. M-21 : Copy of the letter dated 1.7.1998 issued by the first party union to the second party, regarding picketing of Office of the Second Party

Ex. M-22 : Police Complaint dated 17.7.1998 lodged by the second party with the Superintendent of Police, Bellary, regarding Blockade at PKL by the Secretary of AITUC at PKL

Ex. M-23 : Police Complaint dated 17.7.1998 lodged by the second party with the Circle Inspector of Police, Sandur regarding continued blockade at PKL by supported of Sri Md. Ismail said to be the Secretary of AITUC, a copy of Dy. Commissioner and Dist. Magistrate, Bellary; Superintending of Police, Bellary, Sub-Inspector of Police Gandiganur and Sandur

Ex. M-24 : Police Complaint dated 14.1.1999 lodged by the second party with the Sub-Inspector of Police, Gadiganur, regarding obstruction at the road leading to the Mines at PKL near Temple premises

Ex. M-25 : Police Complaint dated 26.2.1999 lodged by the second party with the Sub-Inspector of Police, Hosept regarding strike

Ex. M-26 : Police Complaint dated 19.6.1999 lodged by the second party with the Deputy Superintending of Police, Hospet regarding gherao at Hospet Office Premises by Sri Md. Ismail from 21.6.1999

Ex. M-27 : Police Complaint dated 19.6.1999 lodged by the Second Party with the Circle Inspector of Police, Hospet, regarding gherao at Hospet Office Premises by Sri Md. Ismail from 21.6.1999

Ex. M-28 : Police Complaint dated 19.6.1999 lodged by the Second Party with the Superintendent of Police, Bellary, regarding gherao at Hospet Office Premises by Sri Md. Ismail from 21.6.1999

Ex. M-29 : Police Complaint dated 9.12.1999 lodged by the second party with the Circle Inspector of Police, Sandur, regarding illegal and atrocious blockade by a Section of workmen residing the quarters of the second party

Ex. M-30 : Police Complaint dated 8.9.2000 lodged by the second party with the Superintendent of Police, Bellary regarding totally unjustified agitation by Shri A R Ismail of Bellary District Mines & Minerals Transport Workers Union, etc.

Ex. M-31 : The Appeal made by the management on 4.5.1998

Ex. M-32 : The Appeal made by the Personnel Officer of the second party management on 11.5.1998

Ex. M-33 : The Appeal made by the Personnel Officer of the Second Party Management on 15.5.1998

Ex. M-34 : The Appeal made by the Mines Manager of the Second Party Management on 11.6.1998

Ex. M-35 : The Appeal made by the Mines Manager of the second party management on 14.6.1998

Ex. M-36 : The Appeal made by the Mines Manager of the Second Party management on 18.6.1998

Ex. M-37 : Warning to all workers issued by the Personnel Officer of the Second Party Management on 13.7.1998

Ex. M-38 : Report made by the Second Party on 4.5.1998 to the Asst. Commissioner, Hospet, regarding Labour Problem created by Sri Md. Ismail, General Secretary, AITUC

Ex. M-39 : Report made by the second party on 10.5.1998 to the Taluk Magistrate & Tahsildar, Hospet, regarding illegal blockage and locking up of office of the second party

Ex. M-40 : Report made by the second party on 15.5.1998 to the Taluk Magistrate & Tahsildar, Hospet, regarding illegal strike, Gherao, etc.

Ex. M-41 : Report made by the second party on 28.8.1998 to the Taluk Magistrate & Tahsildar, Hospet, regarding anticipated danger to life and property of the Second Party

Ex. M-42 : Report made by the Iron Ore Workers' Union dated 11.6.1998, to the Regional Labour Commissioner (C), Government of India, Ministry of Labour, Bangalore, regarding the co-operation extended by the management to the workers and also about the illegal and unlawful activities of the members of the first party Union

Ex. M-43 : Charge sheet dated 24.4.1998, 18.5.1998 and 20.6.1998 issued to Sri Rajendra Pillai (3 Charge Sheets)

Ex. M-44 : Charge Sheet dated 24.4.1998, 18.5.1998 and 20.6.1998 issued to Sri M Nagaraj (3 Charge Sheets)

Ex. M-45 : Charge Sheet dated 18.5.1998 issued to Sri M Basha

Ex. M-46 : Charge Sheet dated 24.4.1998, 18.5.1998 and 20.6.1998 issued to Sri Mossa Khan(3 Charge Sheets)

Ex. M-47 : Charge Sheet dated 24.4.1998, 18.5.1998 and 20.6.1998 issued to Sri Shivan Kutti(3 Charge Sheets)

Ex. M-48 : Charge Sheet dated 20.6.1998 issued to Sri H G Shivamurthy

Ex. M-49 : Charge Sheet dated 24.4.1998 and 18.5.1998 issued to Sri Md. Ismail (2 Charge Sheets)

Ex. M-50 : Charge Sheet dated 20.6.1998 issued to Sri Dakshinamurthy

Ex. M-51 : Charge Sheet dated 18.5.1998 and 20.6.1998 issued to Sri A Sattar (2 Charge Sheets)

Ex. M-52 : Charge Sheet dated 24.4.1998, 18.5.1998 and 20.6.1998 issued to Sri Jaffer Sadiq (3 Charge Sheets)

Ex. M-53 : Charge Sheet dated 24.4.1998, 18.5.1998 and 20.6.1998 issued to Sri M Ganesh (3 Charge Sheets)

Ex. M-54 : Charge Sheet dated 24.4.1998, 18.5.1998 and 20.6.1998 issued to Sri M Simpson (3 Charge Sheets)

Ex. M-55 : Charge Sheet dated 1.12.1998 & 27.2.1999 issued to Sri Masthan (3 Charge Sheets)

Ex. M-56 : Dismissal Order dated 4.2.1999 issued to Sri Rajendra Pillai

Ex. M-57 : Dismissal Order dated 4.2.1999 issued to Sri M Nagaraj

Ex. M-58 : Dismissal Order dated 4.2.1999 issued to Sri M Basha

Ex. M-59 : Dismissal Order dated 4.2.1999 issued to Sri Moosa Khan

Ex. M-60 : Dismissal Order dated 4.2.1999 issued to Sri Shivan Kutti

Ex. M-61 : Dismissal Order dated 4.2.1999 issued to Sri H G Shivamurthy

Ex. M-62 : Dismissal Order dated 4.2.1999 issued to Sri Md. Ismail

Ex. M-63 : Dismissal Order dated 4.2.1999 issued to Sri Dakshinamurthy

Ex. M-64 : Dismissal Order dated 4.2.1999 issued to Sri A Sattar

Ex. M-65 : Dismissal Order dated 4.2.1999 issued to Sri Jaffar Sadiq

Ex. M-66 : Dismissal Order dated 4.2.1999 issued to Sri M Ganesh

Ex. M-67 : Dismissal Order dated 4.2.1999 issued to Sri Simpson

Ex. M-68 : Dismissal Order dated 4.2.1999 issued to Sri Masthan

Ex. M-69 : Press Notification issued by the second party in "Indian Express" about the threat of murder of GM by the Union Leader

Ex. M-70 : Certified copy of the Sample B Register maintained by the Contractor – Smt. Hanumakka

Ex. M-71 : Certified copy of the Sample B Register maintained by the Contractor – Sri Dharmalingam

Ex. M-72 : Certified copy of the Sample B Register maintained by the Contractor – A D Suresh Kumar

Ex. M-73 : Certified copy of the Sample B Register maintained by the Contractor – B Arumugam

Ex. M-74 : Certified copy of the Sample B Register maintained by the Contractor – A Krishna

Ex. M-75 : Certified copy of the Sample Register of Wages maintained by the Contractor Smt. Hanumakka

Ex. M-76 : Certified copy of the Sample Register of Wages maintained by the Contractor Sri A D Suresh Kumar

Ex. M-77 : Certified copy of the Sample Register of Wages maintained by the Contractor Sri B Arumugam

Ex. M-78 : Certified copy of the Sample Register of Wages maintained by the Contractor Sri A Krishna

Ex. M-79 : Certified copies of the settlements dated 9.12.1989 and 15.9.1994

Ex. M-80 : Certified copy of the Sample Bill dated 6.12.1996 submitted by the Contractor Smt. Hanumakka

Ex. M-81 : Certified copy of the Sample Bill dated 6.12.1996 submitted by the Contractor- Sri A.S. Dharmalingam

Ex. M-82 : Certified copy of the Sample Bill dated 6.12.1996 submitted by the Contractor Sri A.D. Suresh Kumar

Ex. M-83 : Certified copy of the Sample Bill dated 6.12.1996 submitted by the Contractor Sri D. Arumugam

Ex. M-84 : Certified copy of the Sample Bill dated 6.12.1996 submitted by the Contractor Sri A. Krishna

Ex. M-85 : Certified copy of one Sample Transfer of amount dated 10.08.1996, to the Account of the above all 5 contractors by the Canara Bank, Hospet

Ex. M-86 : Certified copy of one such Office Order dated 31.03.1998 put up by the above 5 Contractors. Announcing the change in VDA

Ex. M-87 : Certified copy of the Complaint lodged by the Labour Enforcement Officer (Central), against the Contractors Sri A. Krishna, B. Arumugam, Dharmalingam and Hanumakka, filed before the JMFC Court, Kudligi, and Summons issued by the said Court and penalty remitted by the Contractors after admitting the offence and the Receipt in that regard

Ex. M-88 : The Form-XII Register maintained by the Second Party

Ex. M-89 : Certified copy of the Sample Leave Register maintained by the Contractor Smt. Hanumakka for the year 1996 in Form – G

Ex. M-90 : Certified copy of the Sample Leave Register maintained by the Contractor Sri A.S. Dharmalingam for the year 1996 in Form – G

Ex. M-91 : Certified copy of the Sample Leave Register maintained by the Contractor Sri A.D. Suresh Kumar for the year 1996 in Form – G

Ex. M-92 : Certified copy of the Sample Leave Register maintained by the Contractor Sri B. Arumugam, for the year 1996 in Form – G

Ex. M-93 : Certified copy of the Sample Leave Register maintained by the Contractor Sri A. Krishna for the year 1996 in Form – G

Ex. M-94 : Copy of the Office Order dated 10.04.1998 Issued by the General Manager of the Second Party regarding resuming of duty from Monday the 13th April, 1998

Ex. M-95 : Xerox copy of the Certificate Issued by the Medical Officer of the Second Party to Sri Seetharama Rao, the Mines Manager of the Second Party

Ex. M-96 : Certified copy of the Bonus Payment Register in Form-C maintained by the Contractor – Smt. Hanumakka for the period from 1.4.96 to 31.3.97

Ex. M-97 : Certified copy of the Bonus Payment Register in Form-C maintained by the Contractor – Sri A.D. Suresh Kumar, for the period from 1.4.96 to 31.3.1997

Ex. M-98 : Certified copy of the Bonus Payment Register in Form-C maintained by the Contractor – Sri B. Arumugam, for the period from 1.4.96 to 31.3.1997

Ex. M-99 : Certified copy of the Bonus Payment Register in Form-C maintained by the Contractor – Sri A. Krishna, for the period from 1.4.96 to 31.3.1997

Ex. M-100 : Notice of Closure dated 27.5.2000 along with the enclosure issued by the Second Party addressed to the Secretary to the Govt. of India, Ministry of Labour, New Delhi

Ex. M-101 : Xerox copy of the Concillation Notice No. 5098 dated 16.2.98, issued by the ALC, Ministry of Labour, Bellary

Ex. M-102 : Xerox copy of the Report of Failure of Conciliation dated 28.5.1998

Ex. M-103 : Certified copy of the Charge Sheet dated 24.4.1998 issued to Sri Rangappa, by the Contractor Smt. Hanumakka

Ex. M-104 : Certified copy of the Charge Sheet dated 20.6.1998 issued to Sri Antony Selvaraj, by the Contractor Smt. Hanumakka

Ex. M-105 : Certified copy of the Charge Sheet dated 24.4.1998 issued to Sri Ananda, by the Contractor Sri A.S. Dharmalingam

Ex. M-106 : Certified copy of the Charge Sheet dated 20.6.1998 issued to Mrs. Narayanamma, by the Contractor Sri A.S. Dharmalingam

Ex. M-107 : Certified copy of the Charge Sheet dated 20.6.1998 issued to Mr. L.C. Savari Muthu , by the Contractor Sri A.S. Dharmalingam

Ex. M-108 : Certified copy of the Charge Sheet dated 18.5.1998 Issued to Mr. Raghavendra, by the Contractor Sri B. Arumugam

Ex. M-109 : Certified copy of the Charge Sheet dated 20.6.1998 Issued to Smt. Palanlamma, by the Contractor Sri B. Arumugam

Ex. M-110 : Termination Letter dated 12.8.1998 issued to Sri A.S. Dharmalingam terminating the Contract

Ex. M-111 : Termination Letter dated 12.8.1998 issued to Sri A.D. Suresh Kumar terminating the Contract

Ex. M-112 : Termination Letter dated 12.8.1998 issued to Smt Hanumakka terminating the Contract

Ex. M-113 : Termination Letter dated 16.8.1998 issued to Sri Arumugam terminating the Contract

Ex. M-114 : Termination Letter dated 16.8.1998 issued to Sri A. Krishna terminating the Contract

Ex. M-115 series: 96 Bills produced by contractor Sh. Argumugam for the month of April 1995, May 1995, October 1995 and December 1995

Ex. M-116 series: 90 Bills produced by contractor Sh. A Krishna for the month of April 1995, May 1995, October 1995 and December 1995

Ex. M-117 series: 103 Bills produced by contractor Smt. Hanumakka for the month of April 1995, May 1995, October 1995 and December 1995

Ex. M-118 series: 89 Bills produced by contractor Sh. A Krishna for the month of April 1995, May 1995, October 1995 and December 1995

Documents exhibited on behalf of the I party:

Ex. W-1 series : 60 Nos. of Identity Cards

Ex. W-2 series : 19 Nos. of Wage Slips

Ex. W-3 series : P F Annual Statement 60 Nos.

Ex. W-4 series : 21 Nos. of P F Family Pension Forms

Ex. W-5 series : Letter dated 12.7.1995 issued by II Party to Medical Officer with Identity Card

Ex. W-6 series : Particulars of workmen with Photo in 17 sheets

Ex. W-7 : Authorisation letter dated 19.09.2007 issued to Sh. Savari Murthy to give evidence

Ex. W-8 : Petition dated 09.03.1999

Ex. W-9 : Petition dated 05.04.1999

Ex. W-10 : Reply dated 28.04.1999

Ex. W-11 : Reply dated 06.07.1999

Ex. W-12 : Letter dated 27.01.2000

Ex. W-13 : Factual Report dated 12.11.1999.

नई दिल्ली, 23 मई, 2014

का.आ. 1595.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मोरमुगाओ पोर्ट ट्रस्ट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-II, मुंबई के पंचाट (संदर्भ संख्या 55/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-05-2014 को प्राप्त हुआ था।

[सं. एल-36011/4/2008-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 23rd May, 2014

S.O. 1595.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 55 of 2008) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Mumbai as shown in the Annexure, in the industrial dispute between the management of Mormugao Port Trust and their workmen, received by the Central Government on 22/05/2014.

[No. L-36011/4/2008-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : K.B. KATAKE, Presiding Officer

REFERENCE NO. CGIT-2/55 OF 2008

EMPLOYERS IN RELATION TO THE MANAGEMENT OF MORMUGAO PORT TRUST

The Chairman
Mormugao Port Trust
Mormugao Harbour
Headland Sada
Goa-403 804.

AND

Their Workmmen

The General Secretary
Mormugao Port & Railway Workers Union
Main Administrative office Building
Mormugao Port Trust
Headland, Sada
Goa-403 804.

APPEARANCES :

FOR THE EMPLOYER : Mr. M. B. Anchan, Advocate

FOR THE WORKMEN : Mr. G. Vijaychandran, Advocate.

Mumbai, dated the 3rd February, 2014

AWARD

The Government of India, Ministry of Labour & Employment by its Order No. L-36011/4/2008-IR (B-II), dated 01.09.2008 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

"Whether the action of the management of Mormugao Port Trust, Goa in not granting a paid holiday on 2/6/2007 on account of Election to Goa Legislative Assembly for all the workmen irrespective of the shift in which they are working under the People's Representation Act, 1951 is legal and justified? To what relief the workmen are entitled for?"

2. After receipt of the reference, notices were issued to both the parties. In response to the notice, the second party union filed its statement of claim at Ex-3. According to the second party the Govt. of Goa vide its notification declared the polling day dated 02/06/2007 as paid holiday being polling day for the General Elections to the Legislative Assembly for the State of Goa. However surprisingly the management issued arbitrary Office Order restricting the polling day holiday only limited to polling time between 7 hrs to 19 hrs. The management relied on the office memorandum issued by the Ministry of Personnel, Public Grievance & Pensions dated 26/08/1999. Therefore the workers in the second and third shift on that day were marked absent for not reporting their respective duties.The Union has raised the dispute before ALC (C) as matter could not be settled. The ALC submitted failure report to the Ministry. The Ministry therefore has sent the reference to this Tribunal. The union therefore prays that the circular issued by the management be set aside and quashed and the polling day i.e. 02/06/2007 be declared as paid holiday and the workers who were marked absent be paid their wages of 02/06/2007.

3. The first party management resisted the statement of claim of the Union vide their written statement at Ex-8. According to them the Goa Government vide its notification dated 17/05/2007 had declared holiday on 02/06/2007 being polling day for the General Elections of Goa Legislative Assembly. The said office order laid down specific guidelines for the purpose of declaring general holiday on 02/06/2007 which inter alia declared that the holiday was applicable only to those employees working for the first shift and employees scheduled to work for the second shift were to report for duty by 7.00 p.m. after exercising their franchise. No holiday was declared for employees working in the third shift. The said guidelines were based on the MO no.12/18/99-JCA dated 26/08/1999 issued by the Government of India, Ministry of Personnel, Grievance and Pensions, Department of Personnel and Training. The management denied that the office order was arbitrary. They also denied that all the workmen in second and third shift were also entitled for paid holiday on 02/06/2007. According to them their action of marking the workmen of second and third shift absent was just and proper. Therefore they pray that the reference be dismissed with cost.

4. Following are the issues for my determination. I record my findings thereon for the reasons to follow.

Sr. No.	Issues	Findings
1.	Whether action of management in not granting paid holiday on 02.06.2007 on account of election to Goa Legislative Assembly for all workers including workers of second and third shift is legal and proper ?	No.
2.	What relief the workmen are entitled to?	As per order below.
3.	What Order?	As per order below.

REASONS

Issue No. 1

5. In this respect it was submitted on behalf of the first party that the office order was issued on the basis of circular issued by Election Commission of India dated 6/4/1999. By this circular the Election Commission has clarified that a holiday may be declared only for the shift during which a poll is to be taken. Therefore they submitted that the office order was just and proper and the workmen of second and third shift cannot claim paid holiday on 02/06/2007 when poll of General Election to the Legislative Assembly of the State of Goa had taken place.

6. As against this it was submitted on behalf of the second party that the said circular of Election Commission was challenged before Bombay High Court in Writ Petition No.283 of 1999. The said order has been placed on record at Ex-23. The Hon'ble High Court by its order dated 23/02/2004 while quashing the said circular observed that :

> "In that view of the matter, we strike down para 4 of the said circular and make Rule absolute in terms of prayer clause (bb) of the petition by holding that para 4 of the circular being contrary to Section 135 B of the Representation of the People Act, 1951 is quashed and set aside."

7. Section 135 B of the aforesaid Act makes it abundantly clear that the Legislators intended the day of poll to mean full 24 hours. In the circumstances it is clear that the action and office order of the management of MPT was not just and legal by which they have not granted paid holiday on polling day i.e. on 02/06/2007 to the workmen of second and third shift and marked them absent. Accordingly I decide this issue no.1 in the negative and hold that the workmen of second and third shift were well entitled to the paid holiday on 02/06/2007 being polling day. Accordingly I allow the reference and proceed to pass the following order:

ORDER

(i) The reference is allowed with no order as to cost.

(ii) The action of MPT Goa in not granting paid holiday on polling day i.e. 02/06/2007 to the workers of second and third shifts is hereby declared illegal and unjust.

(iii) The management is directed to release the pay of 02/06/2007 to the workmen of second and third shift who were absent and the workers who have attended the duty on that day be paid overtime wages for the work they have performed.

Date : 03/02/2014

K. B. KATAKE, Presiding Officer

नई दिल्ली, 23 मई, 2014

का.आ. 1596.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेंट्रल बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चंडीगढ़ के पंचाट (संदर्भ संख्या 282/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 22-05-2014 को प्राप्त हुआ था।

[सं. एल-12011/54/2013-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 23rd May, 2014

S.O. 1596.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 282/2013) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh as shown in the Annexure, in the industrial dispute between the management of Central Bank of India and their workmen, received by the Central Government on 22/05/2014.

[No. L-12011/54/2013-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present : SRI KEWAL KRISHAN, Presiding Officer

Case No. I.D. No.282/2013

Registered on 19.8.2013

The General Secretary,
Central Bank of India Employees Union (NZ)
(Regd) 146, Golden Avenue,
Phase-1, Jalandhar. .....Petitioner

Versus

The Zonal Manager,
Central Bank of India,
Zonal Office, Sector 17,
Chandigarh. .....Respondents

APPEARANCES

For the workman : Ex parte.

For the Management : Sh. N.K. Zakhmi Adv.

AWARD

Passed on-3.4.2014

Central Government vide Notification No. L-12011/54/2013 IR(B-II)) Dated 8.8.2013, by exercising its powers under Section 10 sub-section (1) Clause (d) and sub-section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:-

> "Whether the demand of the General Secretary, Central Bank of India Employees Union (N.Z) (Regd), 146, Golden Avenue, Phase-1, Jalandhar (Punjab) against the Zonal Manager, Central Bank of India, Zonal Office, Sector 17, Chandigarh for imposing of alleged illegal and severe punishment of bringing down by two stages in the scale of pay for a period of three years without cumulative effect to Mrs. Suman Suri, CTO, is just, valid & legal? What benefit the workman is entitled for and what directions are necessary in the matter?"

Notice was given to the Employees-Union several times. Notice was again issued through registered cover for 5.3.2014 and none appeared on its behalf on that day and it was proceeded against ex parte.

Since the Union has been proceeded against ex parte and no statement of claim has been filed. Being so, the reference is answered against the Union and workman is not entitled to any benefit. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 23 मई, 2014

का.आ. 1597.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार केनरा बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-II, चंडीगढ़ के पंचाट (संदर्भ संख्या 1337/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 22-05-2014 को प्राप्त हुआ था।

[सं. एल-12012/89/2004-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 23rd May, 2014

S.O. 1597.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 1337/2007) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh as shown in the Annexure, in the industrial dispute between the management of Canara Bank and their workmen, received by the Central Government on 22/05/2014.

[No. L-12012/89/2004-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH.

Present : SRI KEWAL KRISHAN, Presiding Officer.

Case No. I.D. No.1337/2007

Registered on 13.11.2007

1. Sh. Rajesh Kumar, R/o H.No.1566, Dadu Majra Colony, Sector 38(West), Chandigarh.
2. Sh. Sompal, R/o H.No.1566, Dadu Majra Colony, Sector 38(West), Chandigarh.
3. Sh. Rampal, R/o H.No.1566, Dadu Majra Colony, Sector 38(West), Chandigarh.
4. Sh. Chandpal, R/o H.No.1566, Dadu Majra Colony, Sector 38(West), Chandigarh.
5. Sh. Ramesh, R/o H.No.1566, Dadu Majra Colony, Sector 38(West), Chandigarh.
6. Sh. Keshpal, R/o H.No.1566, Dadu Majra Colony, Sector 38(West), Chandigarh.
7. Smt. Sarla Devi, R/o H.No.1566, Dadu Majra Colony, Sector 38(West), Chandigarh.
8. Sh. Suresh Kumar, R/o H.No.1566, Dadu Majra Colony, Sector 38(West), Chandigarh.
9. Sh. Ravinder Kumar, R/o H.No.1566, Dadu Majra Colony, Sector 38(West), Chandigarh.
10. Sh. Krishan Kumar, R/o H.No.1566, Dadu Majra Colony, Sector 38(West), Chandigarh.
11. Sh. Som Prakash, R/o H.No.1566, Dadu Majra Colony, Sector 38(West), Chandigarh.
12. Smt. Kailasho Devi though Usha, R/o H.No.1566, Dadu Majra Colony, Sector 38(West), Chandigarh.
13. Smt. Sunita, R/o H.No.1566, Dadu Majra Colony, Sector 38(West), Chandigarh.
14. Sh. Sanjay Kumar, R/o H.No.1566, Dadu Majra Colony, Sector 38(West), Chandigarh.
15. Smt. Soma Devi, R/o H.No.1566, Dadu Majra Colony, Sector 38(West), Chandigarh.
16. Smt. Binnu Devi, R/o H.No.1566, Dadu Majra Colony, Sector 38(West), Chandigarh.
17. Sh. Pappu, R/o H.No.1566, Dadu Majra Colony, Sector 38(West), Chandigarh.
18. Smt. Antari Devi, R/o H.No.1566, Dadu Majra Colony, Sector 38(West), Chandigarh.
19. Smt. Shamo Devi, R/o H.No.1566, Dadu Majra Colony, Sector 38(West), Chandigarh.

.....Petitioners

Versus

Deputy General Manager,
Canara Bank, Circle Office,
Sector 34, Plot No.1, Chandigarh .....Respondent

APPEARANCES

For the workman : Sh. Ashok Sharma Adv.

For the Management : Sh. N.K. Zakhmi Adv.

AWARD

Passed on-25.4.2014

Central Government vide Notification No. L-12012/89/2004 IR(B-II)) Dated 3.9.2004, by exercising its powers under Section 10 Sub-Section (1) Clause (d) and Sub-Section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:-

> "Whether the action of the Zonal Manager, Canara Bank, Chandigarh in not paying the scale of wages as full time, Sub-staff considering the long services of the 19 part-time Sweepers (as per list annexed) who claim to be doing more work than the prescribed norms of the bank is just and legal? If not, what relief the said workmen are entitled to and from date?"

Notice was given to all the workmen as find mentioned in the list attached with the reference and they submitted separate statement of claims except Kailasho Devi as she was dead when the reference was made.

The workman in their separate statement of claims pleaded that they are working on daily wage basis as part time employees with the respondent management and they attend the following work daily:-

(a) Sweeping and cleaning the floors, Corridors, staircase, staircase landings, passages etc. the area in a ground the building and inside the compound.

(b) Dusting of the computers and printers, almirahs, sofas, tables, chairs, cabins and other furniture items, vehicles, doors, shutters, windows, glasses of windows, silver panel, telephones and its wires, wooden cabins, partitions, counters, railings, ceiling fans and table fans, tubes, bulbs, electrical fittings, external walls, verandah, corridors (Gallery), compound, sweeping DGM, AGM, DM rooms and other rooms, safe room, strong room, record room, stationery room, conference hall, board room (Hall), seminar hall, HO rooms, Urinals, wash basing etc. and other generator room, store room, sport grounds (badminton) furniture item;

(c) Cleaning of sanitary block, lavatory, the floors and tiled portions of the wall and wash basins, dinning space, dinning table and chairs, water storage, vessels, tumblers etc. and any other item requiring better attention than sweeping and dusting with such cleaning materials as may be provided as many times a day and at such intervals as may be required by the concerned managers, to keep the same clean and tidy and free from bad colours.

(d) Watering the plants, gardening and grass cutting and attending to garden etc. if any.

(e) Bringing the water for water coolers, coolers and storage of water as required. As and when required brings Tea/Coffee or Cold Drink and also dusting.

(f) Rack and jail.

They have further given the area maintained by them which is as follows:-

Name	Total Area
Rajesh	22134
Sompal	23716
Rampal	23586
Chandpal	24037
Ramesh	21097
Keshpal	20199
Sarla Devi	20336
Suresh Kumar	11226
Ravinder Kumar	11226
Krishan Kumar	13143
Som Prakash	15774
Kailasho Devi through Usha	20336
Sunita	13072
Sanjay Kumar	11871
Soma Devi	15320
Binnu Devi	11226
Pappu	11226
Antri	11226
Shamo Devi	15607

They were working 8 hours per day and 45 hours in a week but they were given less wages and they claimed wages equivalent to full scale PTE as per the Circular issued by the respondent management along with interest.

Respondent bank filed written statement admitting that the workmen were engaged as part time employees for sweeping/cleaning the branch/premises, dusting tables etc. as pleaded by the claimants. That the workmen were engaged strictly as per the working hour norms and were never paid less wages at any point of time. That the workmen were paid wages according to the scale in which they are fitted as per norms of the respondent bank. It is further pleaded that only the carpet area is to be considered for giving wages and the other items i.e. roof, side walls etc. are not to be taken into account for this purpose. Further objection that the reference is not maintainable as it do not fall within the definition of 'industrial dispute' being not espoused by the Union or by a substantial number of employees. Respondent management also pleaded the carpet area of the various workmen as follow:-

Name	Carpet Area
Rajesh	5765
Sompal	8028
Rampal	5077
Chandpal	6069
Ramesh	6081
Keshpal	9034
Sarla Devi	5897
Suresh Kumar	2000
Ravinder Kumar	2534
Krishan Kumar	8669
Som Prakash	8669
Sunita	1900
Sanjay Kumar	2000
Soma Devi	3081
Binnu Devi	12556
Pappu	1600
Antari Devi	3700
Shamo Devi	1600

Since Kailasho Devi workman was dead when the reference was made and her LRs made an application to bring them on record and the same was declined vide order dated 7.10.2005.

Workman Ramesh and workman Soma Devi also died during the pendency of the reference and their LRs were brought on record vide order dated 16.12.2009 and 17.11.2011 respectively.

Parties led their evidence.

Chand Pal, Suresh Kumar, Ram Pal, Sompal, Kesh Pal, Rajesh Kumar, some of the workmen, appeared in the witness box and filed their respective affidavits reiterating their case as set out in the claim petitions.

On the other hand respondent bank has examined Sh. P.K. Kohli, a Manager, who filed his affidavit reiterating the case as set out in the written statement.

I have heard Sh. Ashok Sharma Advocate appearing on behalf of the workmen and Sh. N.K. Zakhmi, counsel on behalf of management.

It was vehemently argued by the learned counsel for the workmen that all the workmen worked as part time employees whose working hours were more than prescribed in the circular of the bank and they were cleaning more area than required; but were not paid the wages as per norms laid by the bank to which they are entitled. He has further submitted that the bank intentionally did not produce the record to establish that how much time the workmen spent in the bank and therefore it be presumed that they were working for more hours than required as per the circular of the bank and as such they are entitled to regular wages.

On the other hand it was argued by Mr. Zakhmi that the workmen have exaggerated the area maintained by them and even included the dusting of tables, chairs, glasses and almirah etc. which do not fall within the definition of 'carpet area' and the workmen were performing the duties as per the terms of the circular and were accordingly paid the wages and since there is no merit in their averments, the reference be dismissed.

I have considered the respective contentions.

It is not denied that all the workmen were part time employees whose job was sweeping and cleaning the floors etc. as mentioned above. The bank has issued a circular prescribing the norms for appointment of part time employees and their wages and for the sake of convenience, it is reproduced as follow :—

Area-in-use	Staff strength	Wages of PTE	Working hours per week
1000 sft & below	——	On consolidated wages of Rs.740/-	More than 3 hours but less than 6 hours
1000 to 1500 sft	15 or more	On 1/3 scale wages	6 to 13 hours
1500 to 2000 sft	Less than 25	On 1/3 scale wages	6 to 13 hours
1500 to 2000 sft	25 or more	On 1/2 scale wages	More than 13 hours to 19 hours
2000 to 4000 sft	Less than 40	On 1/2 scale wages	More than 13 hours to 19 hours
2000 to 4000 sft	40 or more	On 3/4 scale wages	More than 19 hours to 29 hours
4000 to 6000 sft	Less than 55	On 3/4 scale wages	More than 19 hours to 29 hours
4000 to 6000 sft	55 or more	One PTE on 3/4 scale wages and one PTE on 1/3 scale wages	
Above 6000 sft	Less than 55	-do-	
Above 6000 sft	55 or more	1 PTE on 3/4 scale wages and one PTE on 1/2 scale wages.	
10000 sft or more	55 or more	Two PTEs on 3/4 scale wages.	

The correctness of the circular is not disputed. Thus, as per this circular, the wages were to be paid by taking into account the area in use as well as the staff strength and also the working hours put in by the workmen e.g. if the area in use is 1500 to 2000 sq.ft. and the staff strength is less than 25 and the working hours are 6 to 13 hours; the wages admissible were 1/3 of the scale wages; and if the area was same and the staff strength was 25 or more and the working hours were more than 13 hours, the wages were 1/2 of the scale wages. Thus while fixing the wages the bank has to take into consideration the area in use, staff strength as well as the working hours of the employees.

The workmen have given the area in their respective claim petitions as reproduced in the above chart. Except the statements of the workmen, there is no other evidence for its corroboration. The area claimed by the workmen was not measured at any point of time. The workmen have included certain items i.e. cleaning of tables, chairs, glasses, notice board, computers etc. and the same cannot be treated as 'carpet area'. In the circular of the bank, only the 'area-in-use' is mentioned meaning thereby the floor area which was to be maintained and it automatically includes the tables etc. placed on it. Therefore, it cannot be said that the workmen were cleaning more area than required under the above said circular.

The bank has not produced the record relating to entry and exit from the bank but the same do not serve any purpose as if a person remained sitting in the bank for few hours more, the same do not mean that he was performing any duty relating to his employment. Therefore it is not conclusively proved on the file that the workmen were attending more area than prescribed under the above said circular and working for 8 hours a day as pleaded by them.

Therefore the area mentioned by the management is to be taken as true and binding on it. As per the admission of the management the case of Rajesh, Sompal, Rampal, Chandpal, Ramesh, Kesh Pal, Sarla Devi, Krishan Kumar and Binnu Devi falls within Clause (g) and (h) of the above said circular as the 'carpet area was 5765, 8028, 5077, 6069, 6081, 9031, 5897 and 12556 respectively and they are entitled to ¾ of the scale wages whereas they were paid less.

The case of Soma Devi falls within Clause (e) of the circular as the area covered by her was 3081 and she is entitled to 1/2 of the scale wages whereas she was paid only 1/3 of the scale wages.

Though the area of Som Prakash was 8669 but he was already paid wages as per Clause (g) of the circular.

The workmen Suresh Kumar, Ravinder Kumar, Sunita, Sanjay Kumar, Pappu, Antari Devi and Shamo Devi are already getting the scale wages as per the circular and they are not entitled to any relief.

The contention of the learned counsel for the management that these are individual disputes raised by the workmen and their cause is not taken up by the Union or a number of workmen and therefore the present dispute do not fall within the definition of 'Industrial Dispute Act' as defined under Section 2(K) of the Act. Suffice to say that there are 19 workmen who are agitating regarding their wages and therefore it can be safely concluded that the present dispute is a dispute between the employer and the workmen and falls within the definition of 'Industrial Disputes'.

It was submitted by learned counsel for the management that some of the workmen have settled the matter with the management and they have been regularized and their reference be dismissed. It has been stated that the employees has been retained as full time house-keeper-cum-peon and some of the workmen had given undertaking to withdraw the present reference. Even if it is taken that they have given any such undertaking, the same is not binding on this Court until and unless they themselves come forward to withdraw the reference. This court is bound to decide the reference on its merits and not on account of any settlement affected between the parties out of the Court, as much as no workmen has come forward to admit the said undertaking.

In result, the reference relating to workman Rajesh, Sompal, Rampal, Chand Pal, Ramesh, Kesh Pal, Sarla Devi, Krishan Kumar, Binnu Devi is accepted and it is held that they are entitled to 3/4 of the scale wages; whereas Soma Devi is entitled to 1/2 of the scale wages and it is ordered that the difference be paid to them within three months of the publication of the award failing which they shall be entitled to the interest @6 per cent on the amount payable to them from today till realization. However the reference relating to Som Prakash, Suresh Kumar, RavinderKumar, Sunita, Sanjay Kumar, Papu, Antari, Shamo Devi and Kailasho Devi stands dismissed and they are held not to be entitled to any relief. The reference is answered accordingly.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 23 मई, 2014

का.आ. 1598.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 09/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 22-05-2014 को प्राप्त हुआ था।

[सं. एल-12012/80/2011-आईआर (बी-II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 23rd May, 2014

S.O. 1598.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 09/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Mumbai as shown in the Annexure, in the industrial dispute between the management of Indian Bank and their workmen, received by the Central Government on 22/05/2014.

[No. L-12012/80/2011-IR (B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT CHENNAI

Wednesday, the 23rd April, 2014

Present : K. P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 9/2012

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Indian Bank and their workman)

BETWEEN

Sri S. Ayyappan : 1st Party/Petitioner

AND

The General Manager : 2nd Party/Respondent
Indian Bank,
359 Dr. Nanjappa Road,
Coimbatore - 641018

Appearance :

For the 1st Party/ Petitioner : Sri J. Suresh, Authorized Representative

For the 2nd Party/ Management : M/s T.S. Gopalan & Co., Advocates

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-12012/80/2011-IR(B-II) dated 30.01.2012 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

"Whether the action of the management of General Manager, Indian Bank, Coimbatore in imposing the punishment of "BE DISMISSED WITHOUT NOTICE" upon Sri S. Ayyappan, Clerk/Shroff of the Indian Bank, Gudalur Branch vide Order dated 05.04.2010 is legal and justified? What relief the workman is entitled to?"

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 9/2012 and issued notices to both sides. The petitioner appeared through Authorized Representative and the Respondent through its counsel and filed their claim and counter statement respectively. The petitioner filed rejoinder after the counter statement was filed.

3. The averments in the Claim Statement in brief are these:

The petitioner joined the service of the Respondent Bank as Clerk in June 1984. While he was working at Gudalur Branch, he was dismissed from service. The dispute is raised challenging this dismissal. While the petitioner was working at Gudalur Branch he was placed under suspension by letter dated 10.11.2008. This was followed by a Charge Memo setting out five charges against the petitioner. It was alleged in the Charge Memo that the petitioner had unauthorizedly accepted cash being loan proceeds on behalf of multiple borrowers under Salary Loan to Tea Estate Workers. Though the loan proceeds should have been paid individually the petitioner is alleged to have accepted the loan proceeds of many borrowers collectively and handed over the same to outsiders for disbursement to the borrowers. It is further alleged that the petitioner had evinced undue interest in getting loan sanctioned to the persons known to him personally. He is also alleged to have carried out activities of the bank beyond reasonable time of branch functioning. Thirdly it is alleged that the petitioner had assisted and participated in the commission of serious of irregularities by the Branch Managers of the Bank. Although he was aware of the nature and extent of the irregularities being perpetrated by the Branch Managers he had failed in his duty by not bringing it to the knowledge of higher authorities but had partaken in the commission of irregularities by them. Fourthly, it is alleged that on 27.03.2008 he had posted in the system and also made payment of the withdrawal slip presented across the counter by the Third Party for Rs. 1.00 lakh relating to the account of one Gowriamma. The payment was made without obtaining the authorization of the Branch Manager on the withdrawal slip and in the absence of the Pass Book. The identity of the presenter of the withdrawal slip was not verified also. Lastly, it is alleged that the petitioner had filled up NSC loan documents of M.T. Gopalan, the Manager on 27.03.2008 and the Manager had availed loan of Rs. 18,750 and the petitioner had posted the transaction in the system. These are all said to have been done without the signature of Sri Gopalan. The petitioner is alleged to have connived with Sri Gopalan the Branch Manager in unauthorizedly availing the loan. The petitioner had submitted a reply denying the charges levelled against him. Not satisfied with this reply the Respondent ordered departmental enquiry. On conclusion of the enquiry, the Enquiry Officer filed a report exonerating the petitioner of

all the charges made against him. However, the Disciplinary Authority disagreed with the Enquiry Officer's findings in respect of Charges 1 and 3, though concurred with the findings in respect of other charges. After considering the comments given by the petitioner the Disciplinary Officer imposed the punishment of dismissal without notice on the petitioner by order dated 05.04.2010. The appeal filed by the petitioner before the Appellate Authority was rejected. It is thereafter the petitioner had raised the Industrial Dispute. The petitioner has not committed any of the offences alleged against him. The Disciplinary Authority has grossly erred in disagreeing with the Enquiry Officer and in finding the petitioner guilty of charges 1 and 3 levelled against him and imposing the punishment. An order may be passed setting aside the order of punishment and reinstating the petitioner in service.

4. The Respondent has filed Counter Statement contending as follows:

The Respondent has branches throughout the country including at Gudalur and Devarshola in Nilgiri District. The bank advances several loans including personal loan which is normally granted to persons who have regular source of income by way of salary. Advances to borrowers under this category are made without any security. The employers of the borrowers take responsibility of deducting the loan instalments from the salaries. The loan papers should be processed in the branch premises and cash disbursement should be made directly to the parties in the branch premises. Even if loan papers are executed from the place of work of borrowers, disbursement of cash would be done from the Bank itself. The petitioner had been working in Gudalur branch of the Respondent from December 2007. In the early part of October 2008 some Trade Unions complained that Gudalur branch of the Respondent was committing fraud on the workmen of tea estates in Nilagiri District. An investigation was ordered and it was revealed that proposal for loans came through an intermediary who had nothing to do either with the bank or with the workmen of the estate. Due to lapses and connivance of the Officers and Staff of the Gudalur Branch, a large amount of cash by way of personal loans were disbursed with the documents being processed away from the branch. Loan amounts were disbursed, not directly to the borrowers but to unauthorized persons claiming to be on behalf of the borrowers. It was in this context, disciplinary action was initiated against the petitioner. Apart from collective payments unauthorizedly made to persons other than the borrowers other specific instances of irregularities on the part of the petitioner were pointed out in the investigation report. Based on the investigation report, a charge sheet was issued to the petitioner levelling five charges. A departmental enquiry was conducted on the charges. The Enquiry Officer found that the charges are not proved. However, the Disciplinary Authority disagreed with the findings of the Enquiry Officer and held that charges 1 and 3 are proved. The petitioner is not entitled to any relief.

5. The petitioner has frilled a rejoinder in answer to the counter statement filed by the Respondent. The allegations made in the counter statement are denied by the rejoinder.

6. The evidence in the case consists of oral evidence of WW1 and documents marked as Ex.W1 to Ext.W20 and Ex.M1 to Ex.M6. No oral evidence was adduced on the side of the Respondent.

7. The points for consideration in the case are:

(i) Whether the action of the Respondent in dismissing the petitioner from service is legal and justified?

(ii) What is the relief, if any, to which the petitioner is entitled?

The Points

8. The incident resulting in the dismissal of the petitioner from service occurred while he was working as Clerk in the Gudalur Branch of the Respondent Bank. The petitioner had joined the service of the Bank in 1984 and was posted at Devarshola Branch. He was later transferred to Masinagudi and then to Gudalur branch. The investigation by the Officers of the Circle Office, Coimbatore regarding the affairs of Gudalur Branch was done on the basis of the complaint made by certain Trade Unions affiliated to All India Organizations that the workmen of the estates in Nilagiri District were defrauded by the Bank. It was alleged by them that the Gudalur Branch of the Respondent Bank was seeking to recover loans which were not received by workmen. On investigation it was revealed that the proposal for loans for workers emanated through intermediaries who had nothing to do with the bank or estates workmen. The investigation officer reported that owing to lapses or connivance of the Officers or Staff of the branch, a large amount of cash by way of personal loans were disbursed with documents processed away from the branch and payment itself made not directly to the borrowers but to unauthorized person claiming to be on behalf of the borrowers. By 2008, more than Rs. 125 lakhs were outstanding as loan. It was on the basis of this investigation report the petitioner was placed under suspension, charge memo issued to him and departmental enquiry conducted on the charges.

9. Five charges were levelled against the petitioner by the charge memo issued to him. The Enquiry Officer found that none of the charges against the petitioner are proved and submitted a report to this effect. However, the Disciplinary Authority disagreed with the Enquiry Officer on his finding regarding charges 1 and 3. He agreed with the Enquiry Officer in his findings regarding the other charges and exonerated the petitioner of the other charges. On the basis of his findings on charges 1 and 3, the Disciplinary Authority imposed the punishment of dismissal from service on the petitioner.

10. The petitioner having been exonerated of 3 out of 5 charges levelled against him by the Enquiry Officer as well as the Disciplinary Authority, there is no necessity to consider those charges against the petitioner. Only charges 1 and 3 on which the petitioner was found guilty need be considered. The first charge against the petitioner is reproduced below:

> "You had unauthorizedly accepted cash being loan proceeds on behalf of multiple borrowers under salary loan to Tea Estate Workers.
>
> The said loan proceeds should have been paid individually / directly to the borrowers and within the bank's premises, which you failed to adhere to. You had undertaken to accept the loan proceeds of many borrowers collectively and to disburse the same outside the bank's premises. Besides, you had also handed over such loan proceeds to outsiders for disbursement to salary loan borrowers of tea estates which is highly irregular".

11. The Enquiry Officer had examined the Officer who conducted the first investigation, the then Manager of the Bank, a Clerk of the Bank and also the Officer who was working in the Vigilance Department and made further investigation to substantiate the case. 20 documents were also marked on the side of the Management.

12. The Authorized Representative has pointed out that the charge against the petitioner itself is very vague and not specific. It has been pointed out by him that the details of the offences allegedly committed by the petitioner could not be made out from the charge memo. On going through the charge memo it could be seen that there is enough justification for making such an attack by the Authorized Representative. The First charge which is now under consideration as well as other charges are too general in nature consequently becoming very vague. The gist of the first charge is that the petitioner has accepted cash being loan proceeds on behalf of multiple borrowers under salary loan to tea estate workers. The charge does not state who are the alleged borrowers. It does not even state the workers of which estate is referred to. In the first charge itself there is a reference that the loan proceeds were handed over to outsiders. It is not specified to which outsider the proceeds were handed over. In this respect, the Authorized Representative has referred to ANIL GILURKER VS. BILASPUR RAIPUR SHETRA GRAMIN BANK AND ANOTHER reported in 2012 2 LLJ 20. In this the Apex Court has held that the charges levelled against a delinquent employee should be specific, definite and giving details of incident which formed the basis of charge and any enquiry on vague charges is unsustainable. It was a case where it was alleged that the employee had sanctioned loans to a large number of brick manufacturing units by committing irregularities but did not disburse the entire loan amount to the borrowers and misappropriated a portion of the loan. The present case is one in parimateria with the case referred to above. The allegations made are too vague in nature, without revealing the details.

13. Even with the available charge was the Respondent able to substantiate the case against the petitioner? The Enquiry Officer has noticed that the documents arrayed against the petitioner do not contain any specific instances of his making cash payment outside the premises of the Bank. He felt that the report of the Investigating Officer is on the basis of hearsay information. He also noticed that the Investigating Officer who was examined as MW1 did not state that the petitioner is the one who made payments on various dates. The Enquiry Officer refused to rely upon the evidence of other witnesses also for the reason that they have not stated anything specifically about the petitioner. The Disciplinary Authority disagreed with the Enquiry Officer and found that the MW1 who submitted the investigation report had deposed in the enquiry that consolidated cash payments have been made to persons other than the concerned borrowers on different dates. He also relied upon a letter written by MW2, the Manager to find that the petitioner has received payments relating to loan disbursements to the employees of Athikkannu and Parry Agro Industries Estates and had taken cash outside the bank to make payment directly to them. He has relied upon the evidence of other witnesses also in this respect. In his investigation report (MEX-5 in the enquiry) MW1 has stated that for almost two years the Gudalur Branch had entertained loan proposals only through intermediaries. MW2 was the Branch Manager during this period. One Shaju George Thomas, an account holder of Gudalur Branch is said to have acted as intermediary. It is stated in the report that in the normal course the Branch Manager must have directed the prospective borrowers to visit the branch for execution of the loan documents and disbursements in accordance with the stipulated conditions.

14. On a perusal of the evidence available in the enquiry proceedings it could be seen that there is no material at all to make out a case against the petitioner. MW1 has submitted two investigation reports, these are seen marked as MEX-5 and MEX-13 in the investigation proceedings. The second report MEX-13 is regarding charge No. 4 of which the petitioner is already exonerated and is not relevant now. In MEX-5 it is stated that Shaju Thomas and his men, after receiving the forms, had obtained signatures of the workers in blank forms. These are said to have been done with the explicit knowledge and consent of MW2, the Manager. In the investigation report it is stated that at times the petitioner had carried cash outside the branch informing that he would make direct payment to borrowers. He has also stated in the report that out of Rs. 131.82 lakhs disbursed as loan, only a meagre amount has reached the hands of the workers. In the next sentence itself what he has stated is that this meagre sum also was not received

by them from the Bank but from Shaju Thomas, and that the Manager, the petitioner and Balasubramaniam, another staff of the Bank might have appropriated the balance amount. Except for the reference to the petitioner on two occasions in the report the entire report is against the Manager of the Bank. Even though it is stated that at times the petitioner used to carry the cash outside the branch, MW1 has not stated on what basis this conclusion is made. Again, though he has stated that the Manager, the petitioner and others might have misappropriated the amount it is not based on any solid material. This also is only an assumption made by him. There is no material by way of document to support this assumption.

15. From the evidence of the MW2, the Manager it could be seen that the entire incident was the result of mismanagement by him or was a case of misappropriation by him either with the connivance of others or not. According to him, though initially loan amounts were disbursed to the workers directly, later the company in which the borrowers were working had represented that their work was getting affected because of this and wanted the loan payments to be made without affecting their work. So they asked him to make payment to Shaju Thomas. According to him either Shaju Thomas or his employees used to come to the branch and take the cash payment. On some occasions cash was handed over to him by the petitioner outside the branch also, he has stated. It is pointed out on behalf of the petitioner that MW2 himself was under suspension during the time and he was also facing enquiry. It is pointed out that it is only natural that MW2 tried to wash off his hands by putting the blame on the petitioner.

16. The case of MW2 that the petitioner used to make payment outside the premises is not supported by MW3 who was working as Clerk of the Bank. According to MW3, MW2 had told him that the estate workers will not get leave to come to the Bank. According to him he had made payment to the person indicated by the Branch Manager. He has further stated that out of the bank staff, he has made payment to the petitioner and the petitioner used to receive cash from him and go to the Branch Manager's cabin. The petitioner had got himself examined in the enquiry proceedings. According to him, MW2 had told him that there was arrangement in connection with the payment of loan to estate workers. The Manager had compelled him to make payment to the agent. He had told him that he had obtained permission from the Circle Office for such payments. On such assertion from the Manager he had handed over the cash to the Branch Manager himself.

17. One document that has been referred to by the counsel for the Respondent is MEX-1 in the enquiry proceedings. This is a letter written by one Kumar to the Superintendent of Police of Ootacamandu. In this he has introduced himself as a former employee of Shaju Thomas. It is stated in this letter that Shaju Thomas used to send him to collect cash from the petitioner and out of the amount received he used to make payment as instructed by Shaju Thomas and the balance amount would be paid to Shaju Thomas himself or to his wife. The author of this letter is not seen examined in the enquiry proceedings. He was not even questioned by MW1. In this background there is no question of relying upon this letter at all. The statement made in this letter could not be used as evidence against the petitioner.

18. It is a case where poor estate workers were defrauded and lakhs of rupees were misappropriated on the pretext of loans to the workers toiling in the tea estates of Nilagiri District. However, the very evidence given by MW2 would show that he is almost entirely responsible for the happenings in the Branch. It must have been either with the connivance of the other staff of the bank or by him alone. However, there is no acceptable material available to show the involvement of the petitioner in the whole incident. The finding arrived at by the Disciplinary Authority is not based on any material. He has relied upon hearsay information and surmises to come to the conclusion that Charge No. 1 is proved against the petitioner. I find that the Disciplinary Authority has erred in disagreeing with the Enquiring Authority and in arriving at such a conclusion.

19. The Third Charge in the Articles of Charge served on the petitioner is extracted below :

> "You had assisted and also participated in the commission of various serious irregularities by the Branch Managers of the Branch. Although you were aware of the nature and extent of the irregularities being perpetrated by the Branch Managers at various stages, you had failed in your duty by not bringing to the knowledge of the higher authorities. Instead, you also partook in the commission of the irregularities by them".

20. While discussing Charge No. 1, I have already found that there is no material to prove the involvement of the petitioner in the irregularities alleged. There is no material also to show that the petitioner assisted the Manager in committing the irregularities. So there is no question of this part of the charge becoming against the petitioner.

21. The second limb of the Third Charge is to the effect that the petitioner, though aware of the irregularities committed by the Branch Managers at various stages failed in his duty to bring it to the knowledge of the higher authorities. The Enquiry Officer has stated that there is no evidence either documentary or oral showing that the petitioner failed to bring the irregularities, whatever they are, to the notice of the authorities. On account of this, he has found that this charge against the petitioner is not proved. The Disciplinary Authority has relied upon the evidence given by the petitioner himself to disagree with

this finding of the Enquiry Officer and enter a finding of guilt on the petitioner. While the petitioner was examined, the charge sheet was put to him with particular reference to Charge No. 3 and he was asked what he has got to say regarding this. The petitioner has stated in answer to this that he has joined Gudalur Branch in September, 2006 and has reported to the RBS Chief Manager during October 2006 itself. The Circle Office is also said to have been informed through one Yogesh who is a staff of the branch and was a Union Committee Member. According to the petitioner, the Union General Secretary has spoken to the Circle Head, Coimbatore regarding the happenings of Gudalur Branch also. Once the petitioner himself has gone to the Circle Office and had spoken to the General Manager about this. He has spoken to the General Manager at Coimbatore also. He has contacted him by phone and the Manager had once contacted him to know what is happening in the Branch. He had reported the matter to the Vigilance Officer also over phone. Referring to the above evidence given by the petitioner, the DA has come to the conclusion that the petitioner was very much aware of the irregularities taking place in the branch. In fact when the evidence of the petitioner is taken into account, one could not say that he was not aware of the happenings. The Disciplinary Authority has stated that though the petitioner had claimed that he had informed many of his superior officers about the irregularities there is no evidence for the same. It was on this basis it was found by the Disciplinary Authority that Charge No. 3 is proved against the petitioner.

22. It has been pointed out by the Authorized Representative of the petitioner that the petitioner who is only a Clerk which is in the lower hierarchy of the bank could not be expected to put it all in writing and inform the higher officials in writing about the irregularities. He has pointed out that there is sufficient corroboration in the material furnished on the side of the Management itself to probabalize the case of the petitioner that he might have informed the higher authorities about the misdeeds of the Manager. The Authorized Representative has referred to the evidence given by MW3 in this respect. MW3 has claimed that he had told Yogesh, the one who is referred to by the petitioner also, and Yogesh had informed the Circle Office about the happenings. MW3 has further stated that he had heard the petitioner speaking over phone complaining that the Manager is compelling him to do loan work only and not allowing him to do any other work. MW3 is a witness examined by the Management itself and there is no reason not to rely upon the version of MW3.

23. The report submitted by MW4 after investigation itself would show that the superior authorities have been lethargic, probably under the assumption that all is well with the branch. In all probability they might have been under the impression that MW2, the Branch Manager is the one who was able to canvass a lot of loans and he could not have done anything irregular. MW4 has stated in his report that the Assistant General Manager of one of the Tea Estate whose workers were defrauded had alleged certain irregularities by the branch regarding disbursement of loans to the estate workers and had also informed that they were cancelling the undertaking to deduct monthly instalments from the salary of the estate workers. During investigation, MW4 was told by the said Assistant General Manager that in spite of his letter to the Circle Office the same has not been acted upon. Thus it could be seen that even though a complaint had gone to the Circle Office from a very authoritative source it was disregarded. If this is so, it is to be assumed that the information given by the petitioner regarding the activities of the branch also were ignored. Merely because no written information was given by the petitioner to the superior authorities, it could not be stated that he had not given any information. There is no basis for the disagreement of the Disciplinary Authority on the finding of the Enquiry Officer on Charge No. 3 also. I find that the Charge No. 3 also is not proved against the petitioner.

24. The Disciplinary Authority has imposed the punishment of dismissal without notice on the petitioner. The petitioner has claimed reinstatement with back wages. In view of my findings above, the petitioner is entitled to be reinstated in service. However, considering the circumstances of the case, I am not inclined to grant back wages to the petitioner.

25. In view of my discussion above, an award is passed as follows:

The Respondent shall reinstate the petitioner in service within a month.

The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 23rd April, 2014).

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined :

For the 1st Party/ Petitioner : WW1, Sri S. Ayyappan

For the 2nd Party/ Management : None

Documents Marked:

On the petitioner's side

Ex.No.	Date	Description
Ext.W1	19.01.2008	Charge Sheet No. CO:CBE:VG : 513 : 2008-09 issued to Sri S. Ayyappan
Ex.W2	23.02.2009	Reply to the Charge Sheet

Ex.W3	06.06.2009	Letter from defence representative J. Suresh to the Disciplinary Authority
Ex.W4	11.07.2009	Reply by Asstt. General Manager/ Disciplinary Authority ref. no. CO:CBE:VG:155:2009-10
Ex.W5	10.06.2009 10.08.2009 11.08.2009	Proceedings of the departmental enquiry against Sri S.Aiyappan
Ex.W6	30.05.2009	List of Management exhibits alongwith copies of management exhibits and defense exhibit
Ex.W7	24.08.2009	Written brief of Presenting Officer
Ex.W8	29.09.2009	Defence summing up by the Officer representative alongwith enclosure
Ex.W9	20.10.2009	Findings of the Enquiry Officer
Ex.W10	15.12.2009	Letter from Assistant General Manager/Disciplinary Authority CO:CBE:VG:390:2009-10 disagreeing with the findings of the Enquiry Officer
Ex.W11	25.01.2010	Comments on Enquiry Officer's findings and on disagreement by AGM/Disciplinary Authority
Ex.W12	15.03.2010	Second show cause notice issued by AGM/Disciplinary Authority CO:CBE:VG:529:2009-10
Ex.W13	25.03.2010	Reply to the Second Show Cause Notice
Ex.W14	05.04.2010	Speaking orders of Assistant General Manager/Disciplinary Authority, Circle Office, Coimbatore
Ex.W15	13.05.2010	Appeal submitted by Sri S. Aiyappan to Deputy General Manager/Appellate Authority
Ex.W16	22.09.2010	Orders of the Deputy General Manager/Appellate Authority
Ex.W17	27.10.2010	Petition under 2(A) of ID Act
Ex.W18	30.11.2010	Counter submitted by the management for the ID
Ex.W19	03.02.2011	Rejoinder to the counter submitted by Sri S. Aiyappan
Ex.W20	22.03.2011	Comments on rejoinder submitted by Assistant General Manager, Zonal Office, Coimbatore

On the Management's side

Ex.No.	Date	Description
Ex.M1	12.06.2009	Reply from Vigilance Department/ Circle Office, Coimbatore addressed to Mr. Suresh – DA to Mr. S. Aiyappan
Ex.M2	20.07.2009	Letter from Ramabathran, Enquiry Officer, to S. Aiyappan informing that the enquiry will resume on 10.08.2009 and advising him to attend the enquiry
Ex.M3	27.03.2010	Proceedings of personal hearing in respect of charge sheet dated 19.01.2009 before Disciplinary Authority – regarding Aiyappan
Ex.M4	-	Manual on rules of the Respondent Bank in respect of loan to salaried class customers (ADV/12/2000-2001 dated 24.04.2000)
Ex.M5	12.04.2002	Manual on Rules in respect of Clean Loan to Salaried Class Customers Revised Scheme (ADV/008/2002-03 dated 12.04.2002)
Ex.M6	05.04.2005	Manual on lift of cash from customers premises – (Genl./02/ 2005-06 dated 05.04.2005)

नई दिल्ली, 29 मई, 2014

का.आ. 1599.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार हिंदुस्तान पेट्रोलियम कारपोरेशन लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय, सोलापुर के पंचाट (संदर्भ संख्या 01/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23/5/2014 को प्राप्त हुआ था।

[सं. एल-15025/1/2014-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 29th May, 2014

S.O. 1599.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 01/2007) of the Industrial Tribunal/Labour Court, Solapur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Hindustan Petroleum Corporation Limited and their workman, which was received by the Central Government on 23/5/2014.

[No. L-15025/1/2014-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, AT SOLAPUR

Reference (I.T.) No. 01/2007

Adjudication

between

The Regional Manager,
Hindustan Petroleum Corporation Ltd.,
Pune-411 001 .... First Party

And

Shri Raghunath Bhagwan Saptal,
341, Zende Galli, Pandharpur,
District-Solapur (Maharashtra) .... Second Party

CORAM : N. B. Bhos, Presiding Officer, Industrial Tribunal, Solapur.

APPEARANCES : Shri V.R. Kulkarni, Adv. for First Party.

: Shri S.S. Kalekar, Adv. for Second Party.

AWARD

(Delivered on 28.02.2014)

1. This Reference by Central Government (Bharat Sarkar Ministry of Labour/Shram Mantralaya, New Delhi) regarding industrial dispute between 1st Party i.e. The Regional Manager, Hindustan Petroleum Corporation Ltd. Pune and the 2nd Party i.e. Driver Raghunath Bhagwan Saptal under Section 10 of The Industrial Disputes Act, 1947, at the instance of 2nd Party driver Raghunath.

2. As per the statement of claim, brief facts leading to this Reference are narrated as under :-

2nd Party Raghunath was serving as a Driver with Hindustan Petroleum Corporation Ltd., at Pakhni Depot since 1991. In the year 2001, driver Raghunath was suffering from acute backache and because of his ill-health, he could not attend his duties. He had been to Dr. Phadiya of Mahaveer Hospital, Pandharpur and took medical treatment from 17/12/2001 to 31/12/2001. However, he could not recover and thereafter he took medical treatment of Dr. Jintendra Agrawal at Pune from 01/01/2002 to 01/02/2002. As per advice of Dr. Jintendra Agrawal, driver Raghunath had been to Dr. Sandeep and Dr. A. Patwardhan of Sancheti Institute, Pune and took medical treatment from 01/02/2002 to 28/02/2002 and as per advice of Doctors, he took bed rest. In spite of these medical treatments, driver Raghunath could not recover and thereafter he again took treatment of Dr. Benare at Pandharpur and he was advised bed rest from 04/03/2002 to 30/03/2002.

3. The 2nd party driver Raghunath further alleges that on 14/03/2002, he received letter from 1st Party i.e. HPCL to show his all medical reports and x-rays to Doctor appointed by the Corporation at Loni Terminal, Pune. Thereafter, driver Raghunath met to Doctor Shripad Devdhar attached to Corporation at Loni on 27/03/2002. Dr. Devdhar examined driver Raghunath and perused all medical papers and declared that driver Raghunath was fit to resume duty from 01/04/2002 and accordingly he resumed duties from 01/04/2002.

4. The 2nd Party i.e. driver further avers that thereafter he was suffering from malaria and took treatment from Dr. Gaikwad at Pandharpur from 19/06/2002 to 31/08/2002 and thereafter he resumed duties and worked sincerely. However, again his back-ache problem developed and he took treatment of Dr. Vijaysingh Pawar from 27/06/2002 to 24/11/2002, however, there was no relief to him. As per advice of Dr. Vijaysingh Pawar, he took treatment from Dr. Dhananjay Dingre and was admitted as an indoor patient from 07/01/2003 to 13/01/2003. The 2nd Party driver was unable to bear the medical expenses of private hospital and therefore, he took medical treatment at Cottage Hospital, Pandharpur. The 1st Party had full knowledge regarding the ill-health of 2nd Party and his inability to resume the duties. In spite of this fact, 1st Party started departmental inquiry against the 2nd party by issuing charge-sheet to him on the allegations that he remained absent from duties unauthorizedly on several occasions.

5. The 2nd Party driver has no knowledge of English language and could not understand the contents of the charge-sheet. On the 1st day of inquiry, he presented an application to permit him to engage the defence Counsel and to hold inquiry in Hindi or English language and requested for conveyance allowance. As per request of 2nd party, further proceeding of inquiry was started in Hindi language, however, 2nd Party was not allowed to engage Advocate to defend himself in the inquiry and conveyance allowance was not paid to him.

6. The 2nd Party further alleges that the inquiry officer Mr. Rameshkumar/Engg. Pune Retail RO was appointed as an inquiry officer to conduct the inquiry and one Mr. R.K. Barik was appointed as Presenting Officer.

7. The 2nd Party further alleges that the inquiry officer himself examined the 2nd Party at length and concluded this inquiry proceeding and submitted false report that the charges levelled against the 2nd Party were established. The Corporation has not examined any witness. Opportunity was not given to 2nd Party to lead any evidence. The inquiry officer himself has acted as Prosecutor. As such, the inquiry conducted against the 2nd Party was not proper and in accordance with the principles of natural justice. The findings recorded by the inquiry officer are perverse though there was medical evidence regarding ill-health of the 2nd Party. On the basis

of report of the inquiry officer, the 1st Party terminated the 2nd Party Raghunath Saptal - driver from service on 16/09/2005.

8. The 1st Party appeared and resisted his claim by filing written statement at Exh.C-5, wherein, the 1st Party denied all allegations of 2nd Party. He contends that the 2nd party has not preferred an Appeal against the termination order passed by the Disciplinary Authority. Therefore, the Reference is not maintainable. He further contends that the 2nd Party driver remained absent from duties unauthorizedly for number of occasions and years together and therefore, he was charge-sheeted and departmental inquiry was initiated and conducted against him. The 2nd Party admitted all charges levelled against him, hence, there no propriety to permit him to engage Advocate to defend himself in the departmental inquiry. As per the request of 2nd Party, the proceeding of the departmental inquiry was conducted in Hindi language and 2nd Party has replied all questions put to him by the inquiry officer in presence of Presenting Officer. The 2nd Party driver has admitted all the charges levelled against him i.e. absence from duties on number of days and therefore, the inquiry officer did not feel proper to record the evidence of more witnesses. Documents placed on record sufficiently proved the charges levelled against the 2nd Party driver, and therefore, the inquiry officer has properly appreciated the material placed on record and recorded his findings that the charges levelled against the 2nd Party were proved and submitted his report to Employer. The findings of the inquiry officer are valid and legal and there is no substance in the submissions and allegations made by the 2nd Party.

9. The 1st Party contends that on the basis of inquiry report, the 1st Party has rightly terminated the 2nd Party. The punishment awarded by the 1st party is just, proper in the light of serious misconduct committed by the 2nd Party. The past record of 2nd Party was not clean. Before terminating the services of 2nd Party, one month's notice pay was given. Lastly, the 1st Party craved for dismissal of this Reference or to be answered in the negative.

10. Upon rival pleadings of parties, issues are framed at Exh. O-5. Heard the Learned Advocate Shri Kulkarni appearing on behalf of First Party i.e. Hindustan Petroleum Corporation Ltd., and also perused his written notes of arguments marked Exh. C-25. Also heard the Learned Advocate Shri Kalekar appearing on behalf of Second Party i.e. Raghunath Saptal. After appreciation of oral and documentary evidence placed on record in the light of rival submissions, I record my findings against each issue as follows for the reasons stated by me hereinafter :-

	ISSUES	**FINDINGS**
1.	Whether the termination of the services of the Second Party i.e. Shri Raghunath Saptal by the First Party i.e. the Management of HPC Ltd., Pune is legal and proper ?	No.
2.	Whether the Second Party is entitled to the reliefs as claimed for ?	Second Party is entitled for relief of reinstatement only as per final order.
3.	What order ?	Award is passed as per final order.

REASONS

11. In order to substantiate his claim, 2nd Party Raghunath examined himself at Exh. UW-1. He placed his reliance on documents below Exh. U-9, so also, documents produced below Exh. U-12.

While resisting this claim, 1st Party i.e. HPCL examined four witnesses i.e. Officer (H.R.) Amar Satpute at Exh.C-7, principal of Hindustan Petroleum Management Development Institute, Nigde-Pune, namely Rangrao Wagh at Exh.C-10, senior manager (operations) Shri Raja Barik at Exh.C-12 and the manager (operations) Shri Vijay Ghanekar at Exh.C-17.

12. Before proceeding towards reasoning, it is helpful to mention the following admitted factual circumstances on record.

(a) 2nd Party Raghunath Saptal was appointed as a tanker driver by 1st Party i.e. HPCL in the month of August -1991 and he was attached to the Pakhni Depot.

(b) The 2nd Party Raghunath was charge-sheeted on 24/02/2003 on the allegation that he remained absent from duties unauthorizedly on several occasions.

(c) Departmental enquiry was initiated against the 2nd Party Raghunath and Shri Rameshkumar-manager and engineer of Pune retail RO was appointed as an enquiry officer and Mr. R. K. Barik was appointed as presenting officer.

(d) The 2nd Party Raghunath appeared and participated in the enquiry proceeding on 16/02/2004.

13. At this juncture, I must mention that, upon rival pleadings of parties and considering the submissions advanced on behalf of both the sides, preliminary issues were framed at Exh.O-6. After appreciation of evidence placed on record and hearing both the sides, this Tribunal recorded its findings on preliminary issue no.1 as the departmental enquiry conducted against the 2nd Party Raghunath is not just, proper and in accordance with the principles of natural justice. This Tribunal recorded its findings on preliminary issue no. 2 that, the findings recorded by the enquiry officer are perverse.

14. The 1st Party i.e. HPCL has not challenged the findings recorded by this Tribunal on preliminary issues.

15. The evidence of 2nd Party Raghunath speaks that, in the year 2001, severe back-ache problem started to him and because ill-health, he could not join his duties. His evidence further speaks that, he was treated by Dr. Phadiya at Pandharpur during 17/12/2001 to 31/12/2001. He was also treated by Dr.Jitendra Agrawal at Pune from 01/01/2002 to 01/02/2002. He was also treated by Dr.Sandeep and Dr.A.Patwardhan of Sancheti Hospital, Pune and was treated from 01/02/2002 to 28/02/2002 and he was advised bed rest. His evidence also speaks that, in spite of medical treatment of Dr.Patwardhan, he was not relieved from back-ache and thereafter, he took medical treatment of Dr.Benare at Pandharpur and he was advised bed rest from 04/03/2002 to 30/03/2002. His evidence also suggest that, as per letter received from 1st Party Corporation on 14/03/2002, he was examined by Dr.Shripad Devdhar (attached medical officer of Corporation at Loni) on 27/03/2002 and he examined him and perused medical papers produced by 2nd Party Raghunath. Dr.Devdhar declared the 2nd Party Raghunath fit to resume duties from 01/04/2002 and he joined the duties for some days. The evidence of 2nd Party Reghunath also speaks that, thereafter he was suffering from malaria and took treatment of Dr.Gaikwad at Pandharpur from 19/06/2002 to 31/08/2002 and thereafter, resumed duties and worked sincerely, but again the problem of back-ache cropped and he took treatment of Dr.Vijaysingh Pawar from 27/06/2002 to 24/11/2002. His evidence further speaks that, in spite of treatment of Dr.Vijaysingh Pawar, he was not relieved from back-ache problem and thereafter, as per advice of Dr.Pawar, he took treatment of Dr.Dhananjay Dingre and he was admitted in the hospital of Dr.Dingre as an indoor patient from 07/01/2003 to 13/01/2003. His evidence also speaks that, thereafter he took treatment at Cottage Hospital, Pandharpur.

16. The evidence of 2nd Party Raghunath further reflect that, he submitted all medical certificates to the 1st Party i.e. HPCL and the 1st Party had full knowledge regarding his ill-health and regarding his inability to join his duties.

17. As such, the 2nd Party Raghunath tried to show that, due to serious back-ache problem and malaria, he could not join his duties and he informed his superior officers time to time and produced medical certificates, however, departmental enquiry was initiated against him and his services were terminated illegally.

18. In this Reference, this Tribunal has recorded its findings on preliminary issues that the departmental enquiry conducted against the 2nd Party Raghunath is not just, proper and in accordance with the principles of natural justice and the findings recorded by the enquiry officer are perverse. In the premises, the crucial question poses before this Tribunal as to whether the 1st Party i.e. HPCL has justified its action of termination of service of 2nd Party Raghunath by adducing sufficient and cogent evidence before this Tribunal. In order to substantiate the punishment awarded to the 2nd Party Raghunath, the 1st Party HPCL has examined above referred four witnesses.

19. Now, I would like to analyze the evidence of Amar Satpute who is serving as officer (H.R.), with 1st Party HPCL. His evidence speaks that, the 2nd Party Raghunath remained absent from duties without intimation or prior permission and therefore, he was charge-sheeted in view of standing orders of Corporation under the provisions of 31(7) and 31(38). His evidence also speaks that, the explanation of 2nd Party Raghunath was not satisfactory and in the year 2001-2002, he remained absent from duties for total period of 250 days without intimation or prior permission. He also stated that, the 2nd Party Raghunath was asked to undergo medical check-up by Dr.Devdhar at Loni, but he did not go for check-up and did not produce certificate.

20. During the course of cross-examination, this witness Amar Satpute admitted that, the 2nd Party Raghunath was medically checked by Dr.Devdhar on 27/03/2002 and accordingly, medical certificate was issued.

21. After scrutiny of evidence of this witness Amar Satpute, I can safely say that, he never worked at Pakhani depot and he has no personal knowledge regarding the proceeding of 2nd Party Raghunath. During the course of cross-examination, he further admitted that, he doesn't know who were serving at Pakhani depot before 2008. This witness Amar Satpute joined services of 1st Party HPCL on 02/08/2008. As such, he doesn't know anything regarding the illness and actual absentee of 2nd Party Raghunath. Therefore, it is highly unsafe to place reliance on the version of this witness Amar Satpute.

22. Now, I would like to analyze the evidence of 2 witness Mr.Rangrao Wagh-principal of Hindustan Petroleum Development Institute at Nigadi, Pune. His evidence speaks that, he was working at Pakhani depot from 30/11/2001 to 12/10/2005 and he knows the 2nd Party Raghunath who was performing his duties as heavy vehicle driver with 1st Party Corporation. His evidence speaks that, the 2nd Party Raghunath was in habit of remaining absent from duties unauthorizedly and he was negligent in his duties. His evidence also suggest that, in spite of several letters, 2nd Party Raghunath did not join duties and therefore, charge-sheet was issued to him regarding his unauthorized absenteeism and on the basis of report of enquiry officer, the services of 2nd Party Raghunath were terminated by competent authority.

23. During the course of cross-examination, this witness Rangrao Wagh admitted that, 2nd Party Saptal was referred to their attached medical officer Dr.Devdhar at Loni. He further admitted that, he had informed to his regional officer regarding the sickness and mental pressure of 2nd

Party Raghunath after counseling with him. He also admitted that, regarding sickness and mental pressure, 2nd Party Raghunath informed him and for one time, Raghunath had furnished medical certificates regarding his ill-health.

24. This witness also admitted that, after 01/04/2002, 2nd Party Raghunath attended his duties but, he was not regular. As such, after scrutiny of evidence of this witness Rangrao, I can safely say that, the 2nd Party Raghunath was suffering from back-ache, mental pressure and due to these problems, he must not have attended his duties.

25. Now, I would like to analyze the evidence of presenting officer Shri.Raja Barik who was serving as manager (operations) at Pakhani depot. His evidence speaks that, the 2nd Party Raghunath was in habit of remaining absent from duties unauthorizedly and thereafter, he was charge-sheeted. His evidence further speaks that, in spite of letters, 2nd Party Raghunath did not join duties and he has committed misconducts of habitual absenteeism and negligence in duties as per certified standing orders of 1st Party HPCL.

26. During the course of cross-examination, this witness Raja Barik admitted that, 2nd Party Raghunath worked under him for few days and he was remaining ill. He further admitted that, he had informed to their office that, he was unable to attend duties on account of illness. He also admitted that, 2nd Party Raghunath was not attending his duties regularly from December 2001 and Raghunath had produced medical certificates to his office. He further clarified that, 2nd Party Raghunath had produced those medical certificates before his predecessor. In the month of January 2003, 2nd Party Raghunath had produced medical certificate before him and that Raghunath was referred to Dr.Devdhar attached to Loni for examination. He also admitted that, Dr.Devdhar at Loni examined 2nd Party Raghunath and advised him further treatment for his heavy weight, hyper tension and back-ache. His evidence further suggest that, Dr.Devdhar declared 2nd Party Raghunath fit for joining duties and Raghunath joined duties in April and worked in the month of April and May. After analyzing the evidence of this witness Raja Barik, I have no hesitation to hold that, the 2nd Party Raghunath was suffering from hyper tension, back-ache and due to ill-health, he could not attend his duties. The evidence of this witness Raja Barik also sufficiently indicate that, the 2nd Party Raghunath informed to their office regarding his ill-health and also produced medical certificates time to time.

27. I would like to further scrutinize the evidence of witness Vijay Ghanekar who was working at Pakhani depot of 1st Party HPCL since September 1996 till May 2006. In his evidence, he has given every details regarding the absenteeism of 2nd Party Raghunath from duties in the year 2001 and 2001. His evidence suggest that, in the year 2001, 2nd Party Raghunath remained absent from duties for 92 days and in the year 2002, he remained absent from duties for 166 days, i.e. totally for 258 days in these two years, unauthorizedly. This witness has produced the muster-roll maintained at Pakhani depot and it is marked Exh.C-18. He also placed on record the postal acknowledgments regarding receipt of letters given to 2nd Party Saptal and his postal acknowledgments are marked Exh.C-19(collectively).

28. This witness has not produced the leave register of employees and he is unable to tell the leave account of 2nd Party Raghunath for the year 2001-2002. During the course of cross-examination, he admitted that, in the muster-roll, the entry of medical leave is appearing above absentee mark. He also admitted that, the 2nd Party Raghunath was referred to their medical officer Dr.Devdhar at Loni for medical examination and Raghunath was present before the medical officer Dr.Devdhar on 27/03/2002 for medical examination. After close analysis of evidence of this witness Vijay Ghanekar, I can safely say that, it was the duty of 1st Party HPCL to place on record the leave register of employees working at Pakhani depot, so as to ascertain the nature of leave enjoyed by 2nd Party Saptal in the year 2001-2002. The evidence of this witness Ghanekar sufficiently speaks that, the 2nd Party Raghunath was referred to their medical officer Dr.Devdhar at Loni for medical check-up and 2nd Party Raghunath was examined by Dr.Devdhar on 27/03/2002. This admission itself suggest that, the 2nd Party Raghunath was suffering from ill-health and he must have reported to his officers regarding his ill-health and therefore, he was referred to their medical officer Dr.Devdhar for medical check-up.

29. It is pertinent to note that, the 2nd Party Raghunath placed on record the copies of medical certificates issued by Dr.Phadia, Dr.Agrawal, Dr.Patwardhan, Dr.Berali, Dr.Devdhar, Dr.Gaikwad, Dr.Vijaysing Pawar, medical officer Cottage Hospital, Pandharpur, medical superintendent – sub district hospital, Pandharpur. He also placed on record the original medical certificates issued by Dr.Devdhar, Dr.Vijaysing Pawar, medical, Gaikwad Hospital Pandharpur, medical certificate issued by sub-district hospital, Pandharpur.

30. After analyzing the evidence of 2nd Party Raghunath, documentary evidence placed on record i.e. medical certificates and the evidence of witnesses examined on behalf of 1st Party HPCL, I can safely say that, the 2nd Party Raghunath remained absent from duties due to his ill-health and it was not wilful and unauthorized absenteeism. The evidence of witnesses of 1st Party sufficiently speaks that, the 2nd Party Raghunath informed their office regarding his ill-health, so also, he produced the medical certificates to their office time to time.

31. Reliance can be placed on a case of Hon'ble Apex Court in Jagdish Singh V/s. Punjab Engineering College &

Ors., reported in 2009 II CLR Page 514, wherein, it is observed by Hon'ble Apex Court as follows :-

> " It is held that the Courts and the Tribunals can interfere with the decision of the disciplinary authority, only when they are satisfied that the punishment imposed by the disciplinary authority is shockingly disproportionate to the gravity of the charges alleged and proved against a delinquent employee and not otherwise.
>
> The instant case is not a case of habitual absenteeism. The misconduct that is alleged, would definitely amounts to violation of discipline that is expected of an employee to maintain in the establishment, but may not fit into the category of gross violation of discipline. But the Court added that if it were to be habitual absenteeism, it would not have ventured to entertain this appeal.
>
> Taking the totality of the facts and circumstances of the case and having due regard to unblemished record of the appellant, and the reasons for which he remained absent without obtaining permission, the ends of justice would be met, if punishment imposed by the disciplinary authority is modified to that of stoppage of two increments with cumulative effect and further declare that he would not be entitled for any monetary benefits during the period he was out of service and that period would be counted only for the purpose of his service benefits."

32. In another case of Roop Singh Vs. Learned Presiding Judge, Labour Court and Anr., reported in 2013 II CLR Page 914, it is observed by The Hon'ble Himachal Pradesh High Court that "unless it is wilful unauthorized absence from duty by the workman, it does not call for extreme penalty of discharge, dismissal or removal from service."

33. In this particular case at my hand, the 2nd Party Raghunath remained absent from duties for about 258 days in the year 2001-2002, on account of his acute back-ache, hyper tension and malaria and it was not wilful unauthorized absence, and therefore, the action of management of Hindustan Petroleum Corporation Ltd., Pune in terminating the services of 2nd Party Raghunath is not just and proper. The 1st Party HPCL has failed to justify its action taken against the 2nd Party Raghunath. As such, the order of termination of services of 2nd Party Raghunath dated 16/09/2005 deserves to be quashed and set aside. The 2nd Party Raghunath is entitled for reinstatement with continuity of service.

34. Here, another question poses before this Tribunal regarding back wages. In his statement of claim, 2nd Party Raghunath has not claimed the back wages. It is well settled legal position that, with passage of time, pragmatic view must be taken by courts realizing that the industry may not be compelled to pay the workman for the period through which he apparently contributed little or nothing at all paid or for the period that was spent unproductively.

35. The evidence of Mr. Rangrao Wagh at Exh.C-10 speaks that, they used to take the services of casual drivers in absence of regular drivers either from contractor Vishwanath Abute and from other sources. It is fact that, the 2nd Party Raghunath was serving as heavy vehicle driver with 1st Party HPCL. He remained absent on account of his ill-health. In his absence, the 1st Party HPCL must have engaged casual drivers to perform the transport of oil, diesel and petrol to their customers by tankers. It is evident that, at Pakhani depot, daily 39 to 40 tankers were loaded from their depot. As such, due to absence of 2nd Party Raghunath, the 1st Party HPCL, must have spent huge amount for engaging the casual drivers in the place of 2nd Party Raghunath. In the premises, I can safely say that, though 2nd Party is entitled for reinstatement with continuity of service, I am not inclined to grant back wages.

36. Considering the facts and circumstances of this Reference, I hold that, the 2nd Party is entitled for reinstatement with continuity of service, but without back wages. Hence, I record my findings against Issue Nos.1 & 2 accordingly and answer the Reference as follows :-

AWARD

1. The action of management of 1st Party i.e. HPCL, Pune in terminating the services of 2nd Party Raghunath for long absence on account of illness is declared as unjust, illegal and improper.
2. The 1st Party i.e. HPCL is directed to reinstate 2nd Party Raghunath Saptal with continuity of service, but without back wages.
3. In view of circumstances, parties to bear their own costs.
4. Award be drawn accordingly and the copies of this Award be sent for publication to The Central Government.

N. B. BHOS, Presiding Officer

Place : Solapur

Date : 28/02/2014

नई दिल्ली, 29 मई, 2014

का.आ. 1600.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार लाइफ इन्सोरेन्स कारपोरेशन ऑफ इंडिया लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, दिल्ली के पंचाट (संदर्भ संख्या 7/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 23/5/2014 को प्राप्त हुआ था।

[सं. एल-15025/1/2014-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 29th May, 2014

S.O. 1600.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 7/2012) of the Central Government Industrial Tribunal/Labour Court-1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Life Insurance Corporation of India Limited and their workman, which was received by the Central Government on 23/5/2014.

[No. L-15025/1/2014-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE DR. R. K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, KARKARDOOMA COURTS COMPLEX, DELHI

ID No. 7/2012

Ms. Renuka Sharma
W/o Sh. Amit Sharma,
H. No. C-5-A/96, Janakpuri,
New Delhi-110058 .....Workman

Versus

The Sr. Divisional Manager,
LIC of India, D.O.-III,
Jeevan Parvah Building,
Janakpuri District Centre,
New Delhi-110058 .....Management

AWARD

An Assistant serving in Branch Office 128, Delhi Divisional Office III, Life Insurance Corporation of India (hereinafter referred to as the Corporation) sought permission from her employer to go abroad, where her husband was serving. Leave for 35 days were sanctioned with a stipulation that she will not overstay her leaves. She left for Singapore in the month of April 2008. She was supposed to report for her duties on 16.05.2008. However, she overstayed leaves, sanctioned in her favour. The Corporation wrote letters dated 25.08.2008 and 04.10.2008 informing her that she overstayed her leaves in an unauthorized manner. She was directed to resume her duties immediately. She wrote to the Corporation that she would be able to join her duties in mid of November 2008. On her return, she was allowed to resume her duties by the Corporation and as such, she joined her duties on 27.11.2008.

2. Charge sheet cum show cause notice dated 15.11.2008 was served on the Assistant, namely, Ms.Renuka Sharma. Her reply to the charge sheet was found not to be satisfactory. Domestic enquiry was constituted. Instead of participating in enquiry proceedings, Ms.Renuka Sharma moved an application on 28.12.2008, seeking no objection to go to Singapore, claiming that her husband was unwell. Without waiting for an answer from the Corporation, she left for Singapore on 28.12.2008. Under these circumstances, she opted not to participate in the enquiry. The Enquiry Officer was constrained to proceed ex-parte. He submitted his report to the Disciplinary Authority, who concurred with the findings of the Enquiry Officer. The Disciplinary Authority served show cause notice calling upon the claimant to explain as to why punishment of 'removal from service' should not be awarded to her. Her reply in that regard was considered and thereafter punishment of removal from service was confirmed on the claimant, vide order dated 22.06.2009. Her appeal also came to be dismissed. Memorial presented to the Chairman of the Corporation did not find favours and was brushed aside. Feeling aggrieved, the claimant raised a dispute before the Conciliation Officer seeking reinstatement in service of the Corporation with continuity and full back wages. On expiry of 45 days from the date of moving application before the Conciliation Officer, the claimant raised her dispute before this Tribunal, using provisions of sub-section (2) of section 2A of the Industrial Disputes Act, 1947 (in short the Act). Since dispute was within the period of limitation, as enacted by sub-section (3), and answered requirements of sub-section (2) of section 2A of the Act, it was registered as an industrial dispute, even without being referred for adjudication by the appropriate Government, under section 10(1) (d) of the Act.

3. Claim statement was filed by the claimant pleading therein that she was employed with the Corporation since 01.03.1994. She was working as an Assistant at Branch Office 128, Divisional Office III of the Corporation on 22.6.2009, the date when her services were terminated. She had good record of service and no memo or charge sheet was served upon her till April 2008. Her husband was working in a private company. Sometime in early 2008, he was deputed to work at Singapore. During absence of her husband, her son fell ill and was diagnosed as a patient of depression and loneliness. Her daughter also fell ill. There was none in the family to look after her children. Compelled by the circumstances, she went to Singapore after obtaining no objection certificate and getting her leaves sanctioned from the Corporation.

4. Claimant pleads that on her reaching Singapore, health of her children deteriorated, since they could not get acclimatized there. She also remained unwell. Under these circumstances, she could not return to India after expiry of her sanctioned leave. She requested the Corporation for extension of her leave and letter dated 28.08.2008 was sent in that regard. When situation improved, she came back to India and reported for her duties on 27.11.2008. Ignoring her helplessness, show cause-cum-charge sheet dated 15.11.2008 was served on her.

5. Claimant asserts that her husband fell ill due to food poisoning. As there was none to look after him, she had to rush to Singapore on 28.12.2008 to take care of him. She applied for leave and issuance of no objection certificate to go abroad. As there was no time to await sanction, she believed that the Corporation would accord sanction and grant leaves to her, she left for Singapore. Due to tension, she suffered from uncontrolled hypothyroidism, which situation resulted in her acute weakness. There was no improvement in her condition and she was advised to stay there for some time by the doctors. She informed the Corporation about her condition vide communication dated 31.01.2009, 09.02.2009, 26.02.2009, 18.03.2009 and 24.04.2009. There were enough leaves to her credit, which the Corporation opted not to sanction. Enquiry proceedings commenced in her absence on 05.01.2009 and it was concluded on 06.04.2009. Enquiry Officer submitted his report dated 30.04.2009. The Disciplinary Authority, without considering her reply dated 25.04.2008 and 04.06.2009, imposed punishment of removal from service, besides treating period of absence as dies non. She challenged the said action of the Corporation as unreasonable. The Corporation did not consider her state of helplessness as well as her role and responsibility of a wife and mother, which she had to perform. The Disciplinary Authority looked in to extraneous considerations, while deciding quantum of punishment for her. Punishment of removal from service was discriminatory since lesser punishment was awarded by the Corporation, to many other employees who were similarly placed in the position in which she was placed. She claims reinstatement in service with continuity and full back wages.

6. Demurral was made by the Corporation pleading that the claim petition is a part of pressure tactics, used by the claimant to pursue her illegal demands. It has not been disputed that the claimant was working as Assistant since 01.03.1994. It is also not disputed that the claimant was a married woman, having two children. The Corporation projects that her application seeking no objection for going abroad was granted with clear stipulation that no concession would be given in the matter of leave and no extraordinary leave would be sanctioned to her. Privilege leave from 11.04.2008 to 15.05.2008 were sanctioned in her favour, to enable her to go to Singapore. The Corporation asserts that claimant preplanned the entire scenario and violated terms and conditions on which no objection certificate was granted and leaves were sanctioned in her favour. Letters dated 12.06.2008 and 25.08.2008 were sent, informing the claimant that she had overstayed her leave. She was directed to resume her duties immediately. An e-mail, dated 18.09.2008, was also sent to her. She did not resume her duties. Letter dated 28.08.2008 was written by her, detailing therein that she would join her duties in mid of November 2008. She did not comply with official instructions to resume her duties and overstayed leaves in an unauthorized manner, hence charge sheet cum show cause notice dated 15.11.2008 was issued to her. Her reply dated 27.11.2008 was found not to be satisfactory. However, she was allowed to resume duties when she made such request on 27.11.2008. Vide letter dated 27.12.2008, received on 30.12.2008, she requested for grant of leave from 27.12.2008 to 10.01.2009, as she was unwell. She also requested for grant of no objection to travel abroad, vide her letter dated 28.12.2008. She left India without obtaining no objection from the Corporation.

7. The Corporation disputes that on reaching Singapore, she suffered uncontrolled hypothyroidism resulting in acute weakness. It is disputed that she was advised by the doctor to remain in Singapore. It has also been disputed that she kept the Corporation informed about her illness and submitted medical certificates in that regard. Letters dated 24.01.2009, 14.02.2009 and 03.03.2009 were sent calling upon her to join her duties immediately. Instead of joining her duties, she sent letters dated 31.01.2009 and 26.02.2009 seeking extension of her leave on medical grounds. Subsequently, vide letter dated 06.03.2009, she was advised to join her duties but those instructions were not complied with.

8. Claimant was well aware that a domestic enquiry has been constituted against her. She was informed vide letters dated 26.12.2008, 05.01.2009, 16.01.2009, 16.02.2009, 05.03.2009, 20.03.2009, 06.04.2009 and 20.04.2009, but she opted not to join enquiry proceedings. Enough opportunities were given to defend herself. Enquiry Officer conducted the enquiry in consonance with principles of natural justice and submitted his report to the Disciplinary Authority. The Disciplinary Authority considered her reply and awarded punishment of removal from service. Her period of absence was treated as dies non. The Corporation pleads that punishment awarded commensurate to her misconduct. It has been disputed that punishment awarded to the claimant was discriminatory since lesser punishment was awarded to similarly situated officers/ employees. Her claim petition is liable to be dismissed, being misconceived, pleads the Corporation.

9. On pleadings of the parties, following issues were settled:

(i) Whether enquiry conducted by the management was not just, fair and proper?

(ii) Whether punishment of removal from service is disproportionate to her alleged misconduct?

(iii) To what relief the claimant is entitled?

10. The claimant examined herself to substantiate her claim. Ms.Meenakshi Saxena was examined on behalf of the Corporation.

11. Arguments were heard at the bar. Shri Inderjit Singh, authorized representative, advanced arguments on behalf

of the claimant. Shri Arun Aggarwal, authorized representative, raised submissions on behalf of the Corporation. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:-

Issue No. 1

12. At the outset, Shri Inderjit Singh argued that factum of overstaying sanctioned leave cannot be termed as misconduct within the meaning of clause 39 of the Life Insurance Corporation of India (Staff) Regulations 1960 (in short the Regulations). He asserts that regulation 61 of the Regulations contemplates that when an employee absents after the end of his leave, he is entitled to no leave salary for the period of absence and that period will be treated as extraordinary, leave unless otherwise directed by the Competent Authority. Contra to it, Shri Aggarwal presents that leave cannot be claimed as a matter of right and overstayal of leaves is a misconduct, consequences of which an employee had to suffer. He asserts that clause (g) of regulation 61 projects a proposition that when an employee overstays his leave, he would not be entitle to salary for that period and his overstayal will be treated as extraordinary leave. He contends that for extraordinary leave, an employee is not entitled to leave salary, unless otherwise directed by the Competent Authority in that regard. According to Shri Aggarwal, Shri Singh is putting wrong gloss on the regulation, referred above.

13. The Regulations framed by the Corporation governs service conditions of its employees. General conditions governing grant of leave to an employee, are detailed in regulation 61 of the Regulations. For sake of convenience, provisions of the said regulation are extracted thus:

'General Conditions Governing Grant of Leave :

61. The following general principles shall govern the grant of leave to the employees:-

(a) Leave is earned by duty or service.

(b) It cannot be claimed as a matter of right.

When the exigencies of service of Corporation so require discretion to refuse or revoke leave of any description is reserved to the authority empowered to grant it.

Explanation : Sanction of leave may not be presumed and leave asked for should not be availed of unless it has been specifically sanctioned.

(c) All leave lapses at the time of retirement, death, discharge, dismissal, resignation or termination for any reason whatsoever.

(d) An employee on leave may not take up any service or accept any employment. During terminal leave or leave preparatory to retirement an employee may take up any service or accept any employment with the prior permission of the Chairman which should be granted only in rare cases.

(e) An employee is expected to avail of leave granted fully, before resuming duty. An employee on leave cannot return to duty before the expiry of such leave except with the permission of the competent authority.

(f) An employee on leave on medical certificate may not return to duty without producing a medical certificate of fitness. The competent authority may require an employee who has availed of leave for reasons of health to produce a medical certificate of fitness even though such leave was not granted on medical certificate.

(g) An employee who remains absent after the end of his leave is entitled to no leave salary for the period of such absence and the period of overstayal will be treated as extraordinary leave, unless otherwise directed by the competent authority. Wilful absence from duty after the expiry of leave will be treated as a breach of these Regulations for the purpose of Regulation 39.

(h) Leave may be prefixed and/or suffixed to a holiday.

(i) Leave may not be granted to an employee under suspension. A competent authority may, however, grant leave to an employee during the pendancy of disciplinary proceedings.

(j) Leave ordinarily begins on the day from which charge is handed over and ends on the day preceding that on which charge is resumed.

(k) The leave to an employee is the period which he has earned diminished by the period of leave actually taken.

(l) Casual leave may normally be availed of only after sanction by the competent authority but one day's casual leave may be availed of without prior sanction in case of unforeseen emergency provided the competent authority is promptly advised of the circumstances in which prior sanction could not be obtained.

(m) Application for privilege leave shall ordinarily be submitted 15 days before the date from which the leave is required. Applications which do not satisfy this requirement may be refused without assigning any reason.

(n) An employee shall, before proceeding on leave, intimate to the competent authority his address while on leave and shall keep the said authority informed of any change in the address previously furnished.

(o) Combination of leave: Casual leave cannot be availed of in conjunction with any other kind of leave except special leave. Subject to this condition any kind of leave under these Regulations can be granted in combination with or in continuation of any other kind of leave.'

14. Much hue and cry has been raised by the claimant, putting a gloss on clause (g) of regulation 61 of the Regulations. According to Shri Singh, an employee has a right to get period of overstay treated as extraordinary leave. He agitates that phrase 'An employee who remains absent after the end of his leave is entitled to no leave salary…' makes it apparent that for period of his absence, an employee is entitled to no leave salary. He went on to argue that the period of absence will be treated as extraordinary leave by the Corporation. I am afraid that contention put forth by Shri Singh has substance. Provisions of clause (g) of regulation 61 of the Regulations cannot be read in isolation. It shall be read in consonance with other provisions, detailed therein. As projected in the regulations, leave cannot be claimed as a matter of right. An employee can earn leave by duty or service. When exigency of service so requires, discretion vests in the Corporation to refuse or revoke leave of any description. Sanction of leave cannot be presumed and leave asked for cannot be availed unless it has been specifically sanctioned. These propositions make it apparent that sanction of leave would depend on exercise of discretion, vesting in the Corporation. In exigencies, the Corporation may refuse leave or revoke leave of any description, granted to an employee. Thus it is emerging over the record that leave is not a matter of right, vesting in an employee of the Corporation. When an employee absents himself, he must have applied for and obtained leave from the employer. No employee can claim leave of absence as a matter of right and remaining absent without leave will constitute violation of discipline.

15. In the light of reasons, referred above, provisions of clause (g) of regulation 61 are to be taken note of. As provided therein, clause (g) of regulation 61 of the Regulations projects that an employee is not entitled to leave salary for the period he remains absent after end of his leave. Specific proposition has been made to the effect that an employee, who remains absent after his leave stood expired, would not be entitled to claim any leave salary. His period of overstayal will be treated as extraordinary leave, which would mean that he will not earn any wages for that period, unless otherwise directed by the Competent Authority. Therefore, period of overstayal, if treated as extraordinary leave, would not count as spent on duty. It has nowhere been mentioned in clause (g) of regulation 61 of the Regulations that period of overstayal would stand regularized by treating it to be extraordinary leave.

16. An employee is under an obligation not to absent himself from work without good cause. Absence without leave is misconduct in industrial employment, warranting disciplinary punishment. Habitual absence from duty without leave has been made a misconduct under Model Standing Orders, framed under Industrial Employment Standing Orders Act, 1946. Likewise, industrial employers also include "absence from duty", without leave in the list of misconduct in their standing orders. Sanction of leave can be a significant defence to misconduct of absence without leave. No employee can claim leave of absence as a matter of right and remaining absent without leave will constitute violation of discipline. The fact that the claimant was continuously absent from work without leave, on account of his detention in jail for an offence, will not give an immunity to the claimant and the employer will be justified in discharging him from services, announced the Apex Court in Burn & Company, [1959 (1) L.L.J. 450].

17. In Indian Iron and Steel Company Ltd. [1958 (1) L.L.J.260] the Apex Court was confronted with a proposition as to whether provisions in the standing orders authorizing the employer to terminate services of its employee on account of absence without leave was an inflexible rule. In that matter seven workmen were absent without leave for 14 consecutive days, as they were in police custody. During police custody they applied for leave which were refused by the company and services of the workmen were terminated under relevant standing order for remaining absent without leave. The Industrial Tribunal took a view that the relevant standing order was not an inflexible rule and mere application for leave was sufficient to arrest the operation of the standing order. In appeal, though the Labour Appellate Tribunal did not maintain the award of the Tribunal on that count, yet it held that in view of the circumstances that the workmen were in custody, the company was not justified in refusing leave. When the matter reached the Apex Court, it set aside the order of the Labour Appellate Tribunal, relying its precedent in Burn & Company Ltd. (supra) and ruled thus:-

> "It is true that the arrested men were not in a position to come to their work, because they had been arrested by the police. This may be unfortunate for them, but it would be unjust to hold that in such circumstances the company must always give leave when an application for leave is made. If a large number of workmen are arrested by the authorities in charge of law and order by raising of their questionable activities in connection with a labour dispute (as in this case), the work of the company will be paralyzed if the company is forced to give leave to all of them for more or less indefinite period. Such a principle will not be just, nor will it restore harmony between labour and capital or ensure normal flow of production. It is immaterial whether the charges on which the workmen are arrested by the police are ultimately proved or not in a court of law. The company must carry on its work and may find it impossible to do so if a large number of workmen are absent. Whether in such circumstances leave should be granted or not must be left to the discretion of the employer. It may be rightly accepted that if the

workmen are arrested at the instance of the company for the purpose of victimization and in order to get rid of them on the ostensible pretext of continued absence, the position will be different. It will then be a colourable or malafide exercise of power under the relevant standing order, that however, is not the case here."

18. Defence open to an employee, against charge of absence without leave, is that the absence was on account of circumstances beyond his control. For instance, where absence of a workman was on account of his sudden or serious illness or serious illness of a relation that would be an extenuating circumstance which the employer will have to take into consideration. However, if a workman feigns sickness in order to avoid duty by producing a false medical certificate, this would itself be a serious act of misconduct. In Tata Engineering and Locomotive Company Ltd., (1990 (1) LLJ 403) the Patna High Court was addressed to a proposition where workman absented himself without leave or permission for a considerable period. After about 20 days of his absence, a memo and charge sheet was issued, notifying that a domestic enquiry would be held in the matter. The workman failed to appear in a domestic enquiry and the Enquiry Officer conducted the proceedings ex-parte. On consideration of the report of the Enquiry Officer, the Disciplinary Authority discharged him from service. Later on workman informed the management that he was arrested by the police in connection with a murder case and requested to allow him to join duty. On refusal, an industrial dispute was raised. A High Court placed reliance on the precedent in Indian Iron & Steel Company (supra) and Burn & Company (supra) and ruled that the discharge of the workman was valid and justified for continuous absence without permission or leave.

19. Absence without leave constitutes a misconduct justifying disciplinary action against the delinquent workman. Punishment can only be imposed either by complying with the procedure prescribed by the standing orders of the establishment, if any, or the rules of natural justice. Normally punishment should be inflicted after the workman has been found guilty of the misconduct, after holding a domestic enquiry. Reference can be made to Mufatlal Narain Dass Barot (1966 (1) LLJ 437) and Kalika Prasad Srivastava (1987 Lab.I.C. 307). Quantum of punishment in case of misconduct for absence from duty without leave would depend upon the facts of each case. In order to justify the extreme penalty of discharge or dismissal, it is to be proved that the workman remained absent without leave for an inordinate long period. In Bokaro Steel Plant, Steel Authority of India Ltd (2007 L.L.R. 238) removal of workman from service who remained unauthorizedly absent for a period of three months was held to be justified. In Sushil Kumar (2007 L.L.R.45) it was ruled that absence, which is continuous for a long period, amounts to serious misconduct to justify dismissal from service. In Borman (2003 L.L.R. 364) 62 days absence of workman was held to be justified for his dismissal from service.

20. These reasons makes it apparent that absence of an employee from his service is a misconduct for which an employer has right to initiate disciplinary action. Contention put forth by Shri Inderjeet Singh that period of overstayal would be treated as spent on duty has no substance. Provisions of clause(g) of regulation 61 of the Regulations no where detail that on overstaying leaves an employee would be treated away from duty in an authorized manner. His claim that overstayal of the claimant cannot be treated as misconduct is misconceived. Submissions put forth by Shri Singh are, therefore, discarded.

21. In her affidavit Ex.WW1/A, tendered as evidence, claimant presents that charge sheet cum show cause notice dated 15.11.2008 was served upon her. According to her, in the charge sheet, the Corporation already reached a conclusion to the effect that she failed to maintain absolute integrity and devotion to duty, for failing to serve the Corporation honestly and knowingly did acts detrimental to the interest of her employer, which conclusions makes the charge sheet unsustainable. She agitates that there was clear pre-determination on the part of the Disciplinary Authority about her alleged fault, which renders the charge sheet bad in law.

22. For appreciation of submissions made by the claimant, it would be expedient to take note of contents of the charge sheet served on her. For sake of convenience, contents of the charge sheet are reproduced thus:

> "You, Ms.Renuka Sharma, Assistant SRNG 222773 under Delhi D.O. III are hereby charged as under:
>
> That you were sanctioned privilege leave from 11.04.2008 to 15.05.2008 for going to Singapore to meet your husband who is currently posted there. NOC was given to you vide letter dated 28.03.2008, specifying that no concession would be considered in the matter of leave while you are abroad and no EOL would be granted for this purpose and leave granted would depend upon office exigencies. Further vide office letters dated 25.08.2008 and 04.10.2008, you were informed about your unauthorized overstayal abroad after the expiry of your sanctioned leave. You were directed to resume your duties immediately failing which disciplinary action shall be initiated against you as per relevant provisions of Staff Regulations, 1960. The said letters were sent at your local address in the absence of availability of your address at Singapore and now the same are deemed served, displayed on Notice Board of the Branch office 128 on 28.08.2008 and 11.10.2008 respectively.

You have not resumed your duties but sent application dated 28.08.2008 stating that you are hopeful of joining your duties in mid of November 2008. That you have overstayed abroad unauthorizedly since 16.05.2008 and have not complied with official instructions to resume your duties immediately.

By your aforesaid acts you have failed to maintain absolute integrity and devotion to duty, failed to serve the Corporation honestly and faithfully, have knowingly done acts detrimental to the interest of the Corporation and prejudicial to good conduct, thereby violating the provisions of Regulation 21, 24, 30(1) read together with 39(1)Regulation 61(b) and 61(g) of the aforesaid (Staff) Regulations, 1960 , for which any one or more of the penalties specified under Regulation 39(1)(a) to (g) can be imposed on you."

23. No form of charge sheet, which may be given to an employee before actually launching an enquiry, has been provided in the Regulations. In industrial law too, no form is prescribed for a charge sheet, which may be served on an employee by his employer. Charge sheet may detail all particulars of charge and the employer may ask an employee to offer an explanation to the charge sheet. It is a matter of common knowledge that a charge sheet should contain all facts, which combined together, make a particular misconduct. Time and place are sometimes constituent of the charge itself, hence the same should find place in the charge sheet. Sometimes, an employee is found have committed a series of incidents, which are to be enumerated, when charges are framed regarding each incident. Each misconduct should be clearly described to enable the delinquent employee to offer his explanation. In serving a charge sheet, care should be taken to see that the charge sheet is given in a language which the delinquent employee can easily understand. Care should be taken that there should be no verbiage. If in a charge sheet an incident is mentioned in general terms, this would not vitiate the enquiry. Charge sheet should not contain unnecessary matters where allegations unnecessary for the charge are mere surplusage, same can be discarded.

24. Charge sheet is merely description of allegations against an employee which are still unproved. Care should be taken that the language of the charge sheet should not show that the employer had reached a conclusion to the effect that workman is guilty. Whether language of the charge sheet projects such a conclusion is a question of fact. However, bare statement to the effect that the delinquent workman is guilty of the charge does not establish that there is a closed mind. Law to the effect was laid in Nripendranath Tarafdar (1981 Lab. IC 126*). There should be a reasonable apprehension of bias on facts and circumstances of the case. Bias cannot be inferred merely from the words used in the charge sheet. Object of the charge sheet is to give precise notice and specific accusation to which the delinquent employee has to make a defence. Merely because of non compliance of rules, substance of imputation has been distinctly set out it cannot be inferred that it was biased.

25. Whether charge sheet was issued with a closed mind would depend upon the attendant circumstances. Mere factum of particular language used in the charge sheet would not be decisive. If the facts are prima facie against the employee concerned, then the disciplinary proceedings can be started to find out their correctness. If secret enquiry is made and firm views taken about guilt of the employee and opportunity is given to dispel the conclusion, proceedings are vitiated by bias and closed mind.

26. Question for consideration would be as to whether words used in the charge sheet projects bias and closed mind of the Disciplinary Authority? As projected above, the Disciplinary Authority projected in the charge sheet that the claimant failed to maintain absolute integrity and devotion to duty, failed to serve the Corporation honestly and faithfully, have knowingly done acts detrimental to the interest of the Corporation and prejudicial to good conduct, thereby violating the Regulations, for which any one or more of the penalties specified under Regulation 39(1)(a) to (g) may be imposed on her. These words are not decisive. She was called upon to offer her explanation, which fact makes it apparent that the Disciplinary Authority formed a prima facie opinion about the misconduct committed and started to find out correctness of those imputations. It is evident that no final opinion was formed by the Disciplinary Authority in that regard. Besides language used in the charge sheet, the claimant has not been able to show any attending circumstances indicating bias and close mind of the Disciplinary Authority. When above words are construed in the context of the facts that various letters were written to the claimant to participate in the enquiry, it would emerge over the record that the issue was not pre-judged by the Disciplinary Authority. It cannot be construed that the Disciplinary Authority was biased and charge sheet under reference was issued by him with closed mind.

27. In Kalipada Roy [1984(1) LLN (SN) 6] it has been held that reasonable apprehension of bias is to be drawn on facts and circumstances of the case and mere words used in the charge sheet would not be sufficient to infer a bias in the matter. Relying above precedent, it is noted that the claimant had not been able to project any incident giving inference of bias, hence it cannot be concluded that that the words used in the charge sheet are per se sufficient to infer bias on the part of the Disciplinary Authority. Contentions, made in that regard are, therefore, brushed aside.

28. Service of charge sheet on the claimant is not a disputed fact. Claimant concedes that she had not joined the enquiry proceedings. However, she explains that since she was ill, hence she could not join the enquiry proceedings. Ms. Minakshi Saxena unfolds that vide letters dated 05.01.2009, 16.01.2009 and 05.03.2009, claimant was called upon to join enquiry proceedings. When her testimony was purified by an ordeal of cross examination, claimant opted not to question the witness on above facts. Thus, it became evident that the claimant nowhere disputes that the aforesaid letters were sent to her by the Enquiry Officer calling upon her to join enquiry proceedings. At the cost of repetition, it is noted that the claimant presents that she could not join the enquiry since she was unwell. No issue was raised on her behalf to the effect that she was not served with notices by the Enquiry Officer calling upon her to join the enquiry proceedings. Evidently, the Corporation has been able to establish that the claimant was well aware that the Enquiry Officer was proceeding with the enquiry and despite reasonable opportunities, she opted not to participate in the enquiry. It is obvious that the claimant opted not to respond to communications sent by the Enquiry Officer. She did not participate in the Enquiry. When claimant failed to join the enquiry, principles of natural justice cannot be accorded to her in absentia. When the workman did not avail the opportunity then subsequently she cannot challenge the enquiry which was continued in her absence, claiming it to be violative of principles of natural justice. If a workman intentionally refused to participate in the enquiry he cannot complain that his dismissal is against principles of natural justice. Law to this effect was laid in Sadul Textiles Mills Limited [1957 (I) LLJ 572], Bagchi (P.N.) & Co. Private Limited [1959 (I) LLJ 605], Muir Mills Company Limited (24 FJR 123), Major U.R.Bhatnagar [1962 (I) LLJ 656], Ghansham Dass Srivastava [1968 (2) LLJ 246] and Laxmi Devi Sugar Mills [1957(I) LLJ 17].

29. Normally in a judicial proceedings, a party is not to be heard who absents himself from the hearing and if the quasi-judicial authority holds proceedings ex-parte in such a case, then it will not amount to misconduct on his part. Law to this effect was laid in S.Govinda Menon [1973 (2) LLJ 369]. In view of these propositions of law, it is crystal clear that the Enquiry Officer cannot be held guilty of violating the principles of natural justice. Under these circumstances, the Corporation may argue that it was beyond the competence of the Enquiry Officer to accord an opportunity of being heard to the claimant. The enquiry was conducted against the claimant in consonance with the principles of natural justice and fair play.

30. In deciding the question as to whether a particular conclusion of fact was perverse or not, the Tribunal would not be justified in weighing the evidence for itself and determining the question of perversity of the view arrived at by the Enquiry Officer in the light of his own findings on the question of fact. See Hamdard Dawakhana Wakf [1962 (II) LLJ 772]. In a domestic enquiry, once a conclusion is decided from evidence, it is not permissible to assail that conclusion even through it is possible for some other authority to arrive at a different conclusion on the some evidence. Reference can be made to Banaras Electricity Light and Power Co. Ltd. [1972 (II) LLJ 328]. Legal position, detailed in above precedents, changed on introduction of section 11A of the Act.

31. In Powari Tea Estate [1965 (II) LLJ 102] and Khardah and Co. Ltd. [1963 (II) LLJ 452] the Apex Court ruled that the enquiry report is a document which will have to be closely examined by the Industrial Tribunal when a dispute pertaining to disciplinary action against the employee is brought before it for its adjudication. The Calcutta High Court declares in Howrah Trading Co. (Pvt.) Ltd. [1996 (II) LLJ 282] that a cryptic report, for instance, without stating any reasons will be of little value. Failure of the Enquiry Officer to record his findings and conclusions at the end of the enquiry would render the enquiry invalid. Non-production of the enquiry report before the Industrial Tribunal led to a declaration that the enquiry was invalid, when there was no evidence that a report was at all recorded by the Enquiry Officer. See Samnuggur Jute Factory Co. Ltd. [1994 (I) LLJ 634]. In Prakash Chand Jain [1969 (II) LLJ 377] the Apex Court announced that the report of the Enquiry Officer must be supported by legal evidence. In Rajinder Kumar Kindra [1984 (II) LLJ 5245] it was further stated by the Supreme Court that where findings are based on no legal evidence and are either ipse dixit or based on conjectures and surmises unrelated to evidence and they disclose non-application of mind, such findings and conclusions are perverse.

32. Findings recorded in a domestic enquiry can be characterised as perverse only if (a) there was no evidence whatsoever to support the findings, or (b) conclusion recorded were diametrically contrary to the evidence on record, or(c) conclusions were such that no reasonable person would have arrived at on above standards. When report of Enquiry Officer Ex.MW1/22 was scanned, nothing came to my notice to conclude that the report was not supported by evidence. Documentary evidence was placed before the Enquiry Officer which was taken in to account, while judging her accountability in respect of the misconduct for which she was charge-sheeted. Out of the report of the Enquiry Officer, it creeps that he appreciated material produced before him and he reached the conclusions, which are based on cogent evidence. The Enquiry Officer had not ignored any material while recording his conclusions. It is crystal clear that the findings recorded by the Enquiry Officer are based on evidence and his report is not vitiated at all.

33. In view of reasons detailed above, it is evident that the enquiry conducted by the Enquiry Officer was in consonance with principles of natural justice. He gave full opportunity to the claimant to join the proceedings and

defend herself. However the claimant opted to leave for Singapore on 28.12.2008 thereby making it next to impossible to attend the enquiry proceedings. Principles of natural justice were not to be accorded to her in absentia. These facts make it apparent that the enquiry was just, fair and proper. No illegality emerged out of enquiry proceedings and report of the Enquiry Officer. Issue relating to virus of the enquiry cannot be answered in favour of the claimant. Resultantly, it is concluded that the enquiry conducted by the Corporation was just fair and proper. The issue is, therefore, answered in favour of the Corporation and against the claimant.

Issue No. 2

34. On quantum of punishment, claimant presents a case of discrimination. It has been argued on her behalf that other officers/employees, who went abroad and overstayed their sanctioned leaves, were awarded punishment of stoppage of increments only. She was discriminated when punishment of removal from service was awarded to her. Shri Aggarwal argued that punishments were awarded to delinquent officers/ employees, taking into consideration facts and circumstances of individual case(s). According to him, the claimant went abroad for the second time without being granted no objection certificate and remained absent in an unauthorized manner from her duties. He claims that case of the claimant is distinct and different than the illustrations, relied by her.

35. Equality before law and equal protection of laws are fundamental rights of every person, ordains Article 14 of the Constitution. The guiding principles laid in Article 14 are that persons, who are similarly situated, shall be treated alike both in privileges conferred and liability imposed, which means that amongst equals the law should be equal and should be equally administered and that like should be treated alike. Article 16 of the Constitution guarantees equality of opportunities for all citizens in matters relating to employment or appointment to any office under the State. What is guaranteed is the equality of opportunity. Like all other employers, government is also entitled to pick and choose from amongst a large number of candidates offering themselves for employment. But the selection process must not be arbitrary. The guarantee given by clause (a) of Article 16 of the Constitution will cover (a) initial appointments (b) promotions(c) termination of employment (d) and matters relating to salary, periodical increments, leaves, gratuity, pension, age of superannuation etc. Matters relating to employment or appointments include all mattes in relations to employment both prior and subsequent to the employment which are incidental to the employment and form part of the terms and conditions of such employment.

36. Fundamental rights guaranteed by Article 14 forbids class legislation, but does not forbid classification or differentiation which rests upon reasonable ground of discretion. Classification is the recognition of the relations, and in making it the Government must be allowed a wide latitude of discretion and judgment. In a way, the consequences of such classification would undoubtedly be to differentiate persons belonging to that class from others. The classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and the differentia must have a rational relation to the object sought to be achieved. Classification may be made according to the nature of persons, nature of business, and may be based with reference to time.

37. Concept of equality guaranteed by Article 16 of the Constitution is something more than formal equality and enables the underprivileged groups to have a fair share by having more than equal chance and enables the State to give favoured treatment to those groups by achieving real equality with reference to social needs. 'Protection discrimination' enabled the State to adopt new strategy to bring underprivileged at par with the rest of the society, by providing all possible opportunities and incentives to them. Therefore a class may be allowed to have preferential treatment in the matter relating to employment or appointment. There cannot be rule of equality between members of separate and independent group of persons. Persons can be classified in different groups, based on in terms of nature of persons, nature of business and with reference to time.

38. It would be considered now as to whether the claimant could show discrimination in the matter of award of punishment to her. As brought over the record through Ex.WW1/6, one Shri Amajrit Singh remained absent from duties for 316 days, when he went abroad after getting leave for 35 days sanctioned. In his case, period of 316 days overstay was treated as dies non and penalty of removal from service was not awarded to him. Shri Dhiraj Gaur went abroad after getting leave of 60 days sanctioned. He overstayed for a period of 71 days, which period was also treated as dies non. Penalty of removal from service was not awarded to him also. Ms.Manju Mahajan remained absent for a period of 198 days, which period was treated as dies non. Penalty of removal from service was not awarded to her also. Shri Narender Kumar remained absent for 443 days, which period was also treated as dies non. He was retained in service by the Corporation. Shri Harish Chand Bhatnagar also overstayed his sanctioned leave when he went to the United States in the year 2005. Penalty of removal form service was proposed against him as is evident out of Ex.WW1/9. However, penalty of bringing him down by three stages in the basic pay was awarded to him, as projected by Ex.WW1/8. Period of absence was treated as dies non. Shri V.S. Iyer went abroad without prior permission of the Competent Authority. He was served with charge sheet and penalty of reduction in basic pay by two stages in the pay scale was awarded to him, as emerge out of order dated 13.11.2010.

39. Claimant went abroad in August 2008 after getting leaves sanctioned. No objection certificate was given by the Corporation to her for going to Singapore. She overstayed leaves sanctioned in her favour and could join her duties only on 27.11.2008. Charge sheet was served upon her for overstayal of leaves. During pendancy of enquiry, she again went abroad without sanction of leave and permission from the Corporation. As in the case of Shri Iyer, he went abroad without any permission, penalty of removal from service was not granted to him. Same is the fate of other officer/employees, details of whose causes have been portrayed above. It is evident that the claimant stands on the same pedestal on which above officials/ employees were placed. Shri V.S. Iyer and Shri Harish Chand Bhatnagar are similarly situated since they had also gone abroad and overstayed their sanctioned leaves. By no stretch of imagination they can be said to be placed on different pedestals. The Corporation cannot create different categories for similarly situated persons, since it would amount to discrimination. It has not been shown that the case of Iyer and Shri Bhatnagar fall on different footings, based on classification of individuals, job or time. Since Shri Iyer, Shri Bhatnagar and claimant are similarly situated, punishment of removal from service, imposed on the claimant, amounts to discrimination. This Tribunal will come to rescue of the claimant and accord her fundamental rights. In view of these facts, it is concluded that penalty awarded to the claimant is discriminatory and cannot be said to be commensurative to the misconduct committed by her. Issue is, therefore, answered in favour of the claimant and against the Corporation.

Issue No. 3

40. Punishment of reduction in basic pay by three steps in the time scale was awarded to Shri Bhatnagar by the Corporation. Punishment of reduction in basic pay by two stages in the time scale was awarded to Shri Iyer by the Corporation. These two officers were dealt for the same misconduct which was committed by the claimant. Therefore, considering these facts, I am of the considered opinion that penalty different than Shri Bhatnagar and Iyer cannot be awarded to the claimant. Resultantly, this Tribunal intervenes and imposes penalty of bringing the claimant down by three stages in basic pay of the time scale in lieu of penalty of removal from service. Period of overstayal as well as absence in an unauthorized manner till 22.6.2009 shall be treated as dies non. In view of these facts, the claimant is reinstated in service of the Corporation and would undergo penalty referred above, besides the period of overstay and absence in unauthorized manner till 22.6.2009 being treated as dies non. An award is, accordingly, passed. It be sent to the appropriate government for publication.

Dated : 23.4.2014

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 29 मई, 2014

का.आ. 1601.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडेन गैस टर्मिनल, इंडियन ऑयल कारपोरेशन लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, दिल्ली के पंचाट (संदर्भ संख्या 151/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23/5/2014 को प्राप्त हुआ था।

[सं. एल-30012/47/2012-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 29th May, 2014

S.O. 1601.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 151/ 2012) of the Central Government Industrial Tribunal/Labour Court-1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Indane Gas Terminal, Indian Oil Corporation Limited and their workman, which was received by the Central Government on 23/5/2014.

[No. L-30012/47/2012-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE DR. R. K. YADAV, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL NO. I, KARKARDOOMA COURTS COMPLEX : DELHI

I.D. No. 151/2012

Shri Om Prakash,
S/o Shri Amar Singh,
(Pawa – Mundaan), VPO Deegal,
Dist. Jhajjar, Haryana .....Workman

Versus

1. The Manager,
Indane Gas Terminal,
M/s IOCL, Tikari Kalan,
Delhi-110041.

2. M/s. Beehive Security and Surveillance,
H. No. 43, Rathi Enclave,
New Roshan Vihar,
Kakraula More, Najafgarh,
New Delhi-110043. …Management

AWARD

Indian Oil Corporation Ltd. (in short the Corporation) deals with procurement, export, import, refining, storage, transportation, sale and distribution of petroleum products and crude oil. The Corporation owns and operates many refineries in India. It recruits its work force, in consonance

with the recruitment rules. Jobs, which are of intermittent/ casual/sporadic in nature, are got performed through employees of a contractor. The Corporation engages security guards through a contractor, registered with Directorate General of Resettlement, Ministry of Defence, Government of India, New Delhi. Directorate General of Resettlement has formulated a scheme for benefit and employment of ex-servicemen and the contractors, registered with it, follow the said scheme. M/s Beehive Security and Surveillance (in short the Contractor) is one of security agencies, registered with the Directorate General of Resettlement and provides security guards to the Corporation.

2. Shri Om Prakash was engaged as a Security Guard by the Contractor to work at Tikri Kalan Deport, Delhi, of the Corporation. He served there since 01.08.2010. On 30.03.2012, he resigned his job and obtained full and final settlement of his dues from the Contractor. Subsequently, he perceived that the amount, paid to him by the Contractor towards full and final settlement of his dues, was meager. He raised a demand for reinstatement in service of the Contactor, which demand was not conceded to. Therefore, he raised a dispute before the Conciliation Officer. Since his claim was contested by the Contractor, conciliation proceedings ended into a failure. On consideration of failure report, submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication, vide order No.L-30012/47/2012-IR(M), New Delhi dated 28.10.2012 with following terms:

> "Whether action of the management of M/s Beehive Security & Surveillance in terminating services of Shri Om Prakash, S/o Shri Amar Singh from Indian Oil Corporation Depot, Tikri Kalan, Delhi, with effect from 04.08.2011 is legal and justified? What relief the workman is entitled to?"

3. Claim statement was filed by Shri Om Prakash pleading therein that he was engaged as Security Guard by the Contractor on 01.08.2010. He performed his duties at Tikri Kalan Depot of the Corporation regularly and punctually. He was made to work overtime, for which overtime allowance was not paid. He demanded overtime allowance for overtime work performed by him, which demand irked the contractor. His services were illegally terminated in August 2011, without giving one months' notice or pay in lieu thereof. His salary for last several months remained unpaid. Action of termination of his services is illegal and void ab initio. He claims reinstatement in service of the Contractor with continuity and full back wages.

4. The Corporation contests the claim pleading that job for performance of works of intermittent/casual/ sporadic in nature, was assigned to the Contractor. The Contractor engaged his employees to carry out his contractual obligations. There was no relationship of employer and employee between the claimant and the Corporation. The Corporation has followed provisions of Contract Labour (Regulation and Abolition) Act, 1970. No cause has been made out against the Corporation. Claim put forth by the claimant is liable to be dismissed.

5. The Contractor dispels the claim pleading that the claimant resigned his services voluntarily in March 2012 and accepted a sum of Rs.7312.00 towards full and final settlement of his dues. Since the claimant himself resigned the job, there was no occasion for the Contractor to terminate his services. Claimant was engaged as a security guard on 01.08.2010, as projected by the Contractor. His wages were paid in time. His services were not satisfactory. He used to behave indecently on many occasions. Since the Contractor has not taken any action to dispense with the services of the claimant, there was no occasion to give one months' notice or pay in lieu thereof, besides retrenchment compensation. Claim put forward is not maintainable and is liable to be dismissed, pleads the Contractor.

6. Claimant was called upon to adduce evidence to substantiate his claim. Instead of bringing evidence on record to establish his claim, claimant opted to abandon the proceedings since 30.07.2013. The Tribunal was constrained to proceed with the matter under rule 22 of Industrial Disputes (Central) Rules, 1957 and evidence of the claimant was closed.

7. Shri Ajay Pandey, Officer Incharge, tendered his affidavit as evidence on behalf of the Contractor. Since none was there on behalf of the claimant, opportunity could not be accorded to him to purify facts unfolded by Shri Pandey through an ordeal of cross examination. No other witness was examined by the Contractor. Corporation opted not to examine any witness.

8. Arguments were heard at the bar. None came forward on behalf of the claimant to present facts. Shri Ajit Singh, authorized representative, advanced arguments on behalf of the Contractor. Shri Naveen Kumar Chaudhary, authorized representative, raised submissions on behalf of the Corporation. I have given my careful consideration to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:-

9. Shri Ajay Pandey swears in his affidavit dated 03.04.2014, tendered as evidence, that the claimant joined services of the Contractor on 01.08.2010. His last drawn wages were Rs.7592.00. Claimant resigned the job and took full and final settlement of his dues on 30.03.2012. Receipt was executed by him in that regard, which is Ex.MW1/2. He was paid his dues through cheque No.000998 dated 30.03.2012 drawn for a sum of Rs.7312.00 on Dwarka branch of Bank of Baroda. Photocopy of the said cheque is Ex.MW1/3. Facts unfolded by Shri Pandey remained un-assailed. An un-assailed testimony is to be

accepted as true, unless it contains some inherent defects, having bearing on its veracity. Since facts unfolded by Shri Pandey nowhere suffers from any defect, which may give inference to the effect that he is not a reliable witness, his testimony is found to be acceptable.

10. As emerge out of his testimony, which gets re-affirmation from the documents, referred above, that the claimant tendered his resignation, accepted full and final settlement of his dues and left services of the Contractor for good. The fact that he accepted his full and final settlement of his dues makes it apparent that the claimant resigned from service on his own. These facts are sufficient to conclude that the claimant left his services on his own and marched away in search of greener pastures. Under these circumstances, the claimant cannot agitate that his services were terminated by the Contractor. It cannot be said that the services of the claimant were terminated/ discontinued by the Contractor with effect from 04.08.2011.

11. The Contractor could establish that it had not initiated any action to dispense with the services of the claimant. Hence, it cannot be said that the Contractor terminated his services, which act amounts to retrenchment, as defined in section 2(oo) of the Industrial Disputes Act, 1947 (in short the Act). By any stretch of imagination, it cannot be said that action of the Contractor, in accepting resignation of the claimant, amounts to retrenchment. Therefore, provisions of section 25F of the Act does not come into play.

12. No case has been projected by the claimant for application of provisions of section 25G and 25H of the Act. It is evident that the claimant is not entitled to any intervention by this Tribunal. When he himself resigned the job, no occasion would arise to assess legality and justifiability of action of the Contractor in that regard. The claimant is not entitled to any relief, not to talk of relief of reinstatement in service with continuity and full back wages. His claim statement is brushed aside. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dr. R. K. YADAV, Presiding Officer

Dated : April 3, 2014

नई दिल्ली, 29 मई, 2014

का.आ. 1602.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मलाजखंड कॉपर प्रोजेक्ट ऑफ हिन्दुस्तान कॉपर लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 117/90) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23/5/2014 को प्राप्त हुआ था।

[सं. एल-43012/1/90-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 29th May, 2014

S.O. 1602.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 117/90) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Malajkhand Copper Project of Hindustan Copper Limited and their workman, which was received by the Central Government on 23/5/2014.

[No. L-43012/1/90-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/117/90

Presiding Officer: SHRI R.B.PATLE

Shri Swatantra Shrivastava,
H.E.M.E Operator, Grade-II,
Code No. 1769,
Malanjkhand Copper Project,
PO Malanjkhand, Balaghat (MP) .....Workman

Versus

The Executive Director,
Malanjkhand Copper Project,
H.C. Ltd., PO Malanjkhand,
Distt. Balaghat (MP) .....Management

AWARD

Passed on this 7th day of April, 2014

1. As per letter dated 20-4-90 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-43012/ 1/90-IR(Misc.). The dispute under reference relates to:

> "Whether the action of the management of Malanjkhand Copper Project of Hindustan Copper Ltd., PO Malanjkhand, Distt. Balaghat (MP) in dismissing the services of Shri Swatantra Shrivastava, H.E.M.E Operator, Grade II code No. 1769 Malanjkhand Copper Project w.e.f. 22-3-88 is justified. If not, what relief the said workman is entitled to?"

2. After receiving reference, notices were issued to the parties. Statement of claim is submitted by the workman. The management of Project is shown as Ist party and the workman are shown as IInd party/ Non-applicant. The nomenclature shown is incorrect. The correct nomenclature of parties should be workman as Ist party and management

of project as IInd party. The parties hereinafter shall be referred accordingly. Case of Ist party workman is that workman was working as Heavy Earth Moving Operator. In 1986, he was promoted as HEME Grade II. For supporting demands of the employees notice of strike was given. The strike was to be called on 15th, 16th March 1988 on all India level. 21 lakh employees all over India were to participate in the strike in support of their demands. That strike was held peacefully from 14th to 16th March 1988. According to workman, any kind of violence, indecent act are not taken place. The strike was peaceful. Workman being member of Hind Mazdoor Sangh recognized Union, he participate in strike without misusing his official position. The political and antisocial forces had tried to interfere in the strike. There was disturbance in strike by committing certain acts. However the strike was in control, any act of disturbance, damaging properties, giving individual slogans had not occurred.

3. It is alleged that on 16-3-88, some incident occurred creating tension between student and police. The police had used force like latthi charge. However the mobs could not be controlled and police had to fire. 2 employees who had gone for taking their pupils have suffered bullet injuries and some other were injured. Latthi charge was not concerned with strike. Deceased Goyal had gone to take his wife from school. He died by bullet injury. That the administration was trying to take disadvantage of the incident of firing and trying to remove from service to the employees connected with strike. Workman S.Srivastava claims that he had gone to Balaghat as his parents were ill. He was not present on 16-4-88. Thereafter he was suffering from illness, he had returned to Malajkhand on 21-3-88. That both S.Srivastava and N.K.Sharma were shown absconding. Apprehending termination from service S.Shrivastav filed statement of claim. He denied concern with any of the act of violence, indiscipline abuses. Management has not issued notice as per clause 33 of the standing order, no chargesheet is issued to them. Management invoked Clause 34 of standing order for termination of his service. It is illegal, his service cannot be terminated under Section 34 of standing order. The management of IInd party has adopted discriminations passing order of his termination. Ist party workman prays to set aside the order of termination and reinstatement in service with consequential benefits.

4. IInd party filed exhaustive Written Statement at Page 6/1 to 6/22. IInd party opposed relief prayed by both workmen. IInd party has pointed out that nomenclature shown in Statement of claim is not proper. Workman should have shown as Ist party and management as IInd party. That Ist party workman S.Srivastava was appointed in November 1980 as trainee. He was promoted as HEME Grade II in1986. It is denied that his service record is excellent. As per IInd party service record of workman are not satisfactory. His training was extended 3 times. IInd party management has denied that notice of strike was given in support of demands of employees and the strike was called from 14th to 16th March. It is denied that the strike was peaceful and any act of violence , incident act was not committed. BMS is recognized Union is not disputed. It is denied that S.Srivastava, Secretary had not misused his powers. It is denied that peaceful strike was held on 14th to 16th March 1988. It is denied that management had pressurized authorities to impose proclamation of Section 144 of CRPC. That the Govt. Middle School is near bus stand. Because of dispute with the students, the rituous atmosphere was created. The dispute had arose between students and police. Police had resorted to latthi charge and thereafter firing. The wards of several student came at school for taking their pupils. The students and some employees had suffered injuries. IInd party denied that said violent incident was not concerned with strike. That N.K.Sharma and S.Srivastava both were instigating workers. Because of their instigation, the incident had taken place. The strike was not peaceful.

5. Management submits that because of involvement of large nature of incident, it was not possible to take action against all of them. There was evidence about the employee committed misconduct under Clause V to IX, XX,XXII & LI of Clause 30 of the standing orders. Invoking powers under Clause 34 of standing order, the services of workman were terminated. The termination of workman is legal. It is submitted that compliance of Clause 33 of standing order is not necessary. It is denied that provisions of Clause 34 of standing orders are harsh. Management had taken decision in the meeting to terminate services of workman invoking powers under Clause- 34 of standing orders. Before taking said decision, investigation was carried and report of the investigation was submitted. The act of management is not arbitrary, not motivated to cause harassment to workman. The payment of wages was not withheld for causing harassment of workman. It is denied that order of termination of workman suffers from any illegality and be set aside.

6. In specific pleadings, IInd party submits for minor misconduct- punishment of withholding increment of employees was imposed. For serious misconduct, workman were terminated invoking powers under Clause 34 of Standing orders. Allegations in the statement of claim are not correct but same are exaggerated. In the circumstances, it was not possible to conduct enquiry in respect of the alleged misconduct by workman. Their services were terminated considering serious misconduct.

7. Details of the incident are shown in annexure with Written Statement by IInd party management. That notice of strike for 15th, 16th March 1988 was given on 22-2-88. 3 Unions were operating between IInd party. Copper Mines Workers Union INTUC had not given notice of strike. The employees of Malajkhand Copper project were

on strike from 13-3-88 at 4.PM. About 200 employees were supporting strike. Those employees were given slogans that the next day was strike day. Several other slogans instigating employees to resolve to violence. Slogans were given by Shri S.Srivastava and Shri N.K.Sharma. they were leading the processing. The employees not joining strike came in mini bus. They were obstructed and not allowed to join work. That about 150 employees willing to join work were obstructed by Shri N.K.Sharma near water treatment plant. Speech instigating workmen were given. On 13-3-88 N.K.Sharma was leading the processon which resulted to latthi charge. The pandal was installed near water treatment plant by employees supporting strike. On 14th -15th March 88, proclamation under Section 144CRPC was issued. Employees supporting strike had spread nails and stones on the road near State bank of India and several other acts of violence were committed by the employees supporting strike. After police arrested the employees committing violent acts, 30-40 ladies had reached to police station and committed acts of disorder. The labours were instigated against police by S.K.Sharma and Srivastava. The police had to resort to latthi charge and firing. The employees in crowd had entered in the chamber of Executive Director and committed acts of violence damaging furniture by setting fire etc. Shri N.K.Sharma and S.Srivastava were among those persons. The police chased them, however they had ran away. On such contentions, IInd party submits that termination of services of Ist party workman is proper and legal. Reliefs prayed by workman be rejected.

8. Workman filed rejoinder at page 10/1 to 10/5 reiterating their contentions in statement of claim. IInd party filed reply to rejoinder at Page 11/1 to 11/3 denying charge of workman and reiterating their contentions in Written Statement.

9. As per order dated 22-2-96, my predecessor held that enquiry was not conducted. Management is directed to lead evidence to prove misconduct and case was fixed for evidence of management to prove misconduct. Issues framed in the matter are not proper.

10. In view of above aspects, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i)	Whether the action of the management of Malanjkhand Copper Project of Hindustan Copper Ltd., PO Malanjkhand, Distt. Balaghat (MP) in dismissing the services of Shri Swatantra Shrivastava, H.E.M.E Operator, Grade II code No. 1769 Malanjkhand copper Project w.e.f. 22-3-88 is justified?	In Affirmative
(ii)	If so, to what relief the workman is entitled to?	Workman is not entitled to relief prayed.

REASONS

11. As per pleadings of the parties, no chargesheet was issued to workman Shri S.Srivastava. his services are terminated invoking section 34 of the standing orders. Therefore issue No.1 & 2 framed by my predecessor are redundant. The order dated 22-2-96 passed by my predecessor permitting IInd party management to prove misconduct is not challenged by workman. Said order has reached finality. It is binding on both the parties. The services of workman are terminated invoking powers under section 34 of the standing orders.

12. Copy of certified standing orders submitted by Shri Rajneesh Gupta, Advocate appearing for management is incomplete. The copy of certified standing order is submitted by Shri Verma Advocate for workman. Clause 30 of certified standing order provides various types of misconduct. Clause 33 provides procedure for dealing with cases of misconduct. Clause 34 provides for special powers in certain cases, its verbatim is reproduced below.

> " Where a workman has been convicted for a criminal offence in a Court of law or where the management is satisfied for reasons to be recorded in writing, that it is inexpedient or against the interest or the security to continue to employ the workman, the workman may be discharged from service or his service terminated without following the procedure laid down in Clause 33 of these standing orders after giving him requisite notice or pay in lieu thereof."
>
> Both the workmen were prosecuted by police for the same incident. Unfortunately the Criminal case No. 825/88 and Sessions Case 154/89 were withdrawn by the State and the accused persons were discharged in both the cases.

13. Learned counsel for workman Shri Verma submits that present case is covered by ratio in Judgment in–

> "Case of Karan Singh S/o Hanuman Singh versus State of MP and another in judgment dated 7-11-98. I have carefully gone through the facts and ratio held in the said case. The legality of Clause 11 of standing order was involved in case before their Lordship. Clause 11 of the order provided termination of employment and notice thereof to be given by the employer and employee (a) when the employment of a permanent employee is to be terminated, he shall be given one month's notice or shall be paid wages for one month in lieu of notice. No employee other than a permanent employee shall be entitled to any such notice or wages in lieu thereof for termination of his service, (b) the reason for the

termination of service shall be recorded in writing and shall be recorded in writing and shall be communicated to the employee unless such communication may in the opinion of the manager directly or indirectly lay the company or the manager or the person signing the communication open to civil or criminal proceedings at the instance of the employee."

Clause 12.2 deals with the acts or omissions shall amount to minor misconduct. Clause 12.3 deals the punishment for a minor misconduct, clause 12.4 provides no punishment shall be imposed on an employee unless proved guilty of misconduct in an enquiry conducted in a manner.

Their Lordship observed that workman would be entitled to retrenchment compensation if the termination is invoking powers under Clause 11. Employer cannot be kept away without paying retrenchment compensation because Section 11 gives him almost absolute powers in aspects of the workman.

In Para-14 of the judgment, their Lordship observed Clause 11-A of the standing orders as per order dated 15-2-88, this fact was not disputed by the respondents in para-2 of their return. However when the petitioner filed an application before the Labour Court for getting that order declared void, the respondents made a somersault and tried to justify the termination on the ground that infact, the termination was for misconduct. The Labour Court permitted the respondents to take this defence and decided the case as if termination was for a misconduct which could be justified before it by leading evidence."

The facts of present case are not comparable. The order of termination issued by management was preceded by investigating report by District Judge, Balaghat. The order of dismissal dated 22-3-88 finds clear reference of serious misconduct committed by workman under clause V to IX, XX & LI of Clause 30 of certified standing orders. Thus the termination of workman was not by issuing notice and paying retrenchment compensation but termination was for alleged misconduct and exercising powers under Clause 34 of standing orders issued.

14. Clause 11-a referred in Judgment in Case of Karan Singh is not identical to clause 34 of the certified standing orders of IInd party. Clause 34 provides for satisfaction of the management on the ground when it is inexpedient or against the interest or the security to continue to employ the workman, the workman may be discharged from service. The ratio held in above cited case cannot be applied to present case as the workman was dismissed from service invoking power under Clause 34 by the management holding that his continuing in service was not in interest and security of IInd party. Therefore argument advanced on the point by Shri Sanjay Verma Advocate cannot be accepted.

15. As per order dated 22-2-96, management was permitted to prove misconduct. The management has filed affidavit of six witnesses. Witness Tijjulal Kewat in his affidavit of evidence has stated that on 14th to 16th March 88, Mr. Srivastava used to come to the main gate also for making this announcement.. apart from the announcement of 3 days strike an appeal of Bharat band on 15-3-88 was also made. He was shouting on load speaker that " kal se kya hai hadtal hai. Jo bhi kaam par jayega voh gaddar hai. Goli Chale ya bum, hadtal karenge hum. Jo hitlar ki chal chalega voh kutte ki maut marega." Those slogans result in violation. The witness has stated that initially there were about 75 to 80 workmen, they started shouting slogans, their leaders were S.Srivastava and N.P.Sharma. The gathered persons were from MEC and outsiders, all were raising slogans. The persons were having flags of their respective Unions and also holding lathi in their hands. N.K.Sharma and S.Srivastava were instructing to their members how the persons who were going on duty be stopped. The persons were going with lathis and other details are given in his affidavit. That after the injuries inflicted to those 3 persons, police scattered crowd from there beating dundas on road. Shri S.K. Bais sustained injury which was inflicted by the persons of INTUC group. That Shri S.Srivastava was arrested at that time. All the six witnesses have deposed about various acts, slogans, violence of damaging property, set fire to the house of Executive Director, different slogans given, police inflicted lathi charge and firing at the school causing casualities of 2 employees. Tijjulal in his cross-examination says he had heard on microphone S.Srivastava raising slogan. He was saying that employee should not go to work. That one S.K.Bais gave lathi blow to Shri S.K.Bundela. Shri S.P. Pandey and D.K.Singh also given kicks. Shri N.K. Sharma not taken part in the meeting. He didnot stop anybody. Shri N.K.Sharma was saying on telephone for beating. He had heard voice like Mr. Sharma but he could not see his face. The evidence of Tijjulal Kewat about all the incidents narrated in his affidavit is not shattered that Shri S.Srivastava was giving slogans, he was giving speeches at the gate. Workman was involved in violent acts during strike period is not shattered. The evidence of Shri S.K.Bundele is that on 13-3-88, procession lead by N.K.Sharma and S.Srivastava was taken throughout township. They were raising provocating slogans. Incident on 14-3-88 is narrated in para-5. In para-4 the witness has stated that Shri N.K. Sharma along with 60-70 persons were carrtying lathi and stopped. Shri S.Srivastava and N.K.Sharma had spread quantity of nails in front of water filter plant. In Para 8 the witness has stated about proclamation under Section 144 CRPC. The other employees assembled near police station. At 8 AM,

a truck load of MECL workers arrived near police station and were arrested. On request from police authorities, Shri Amarsingh was detained and arrested all those persons. Shri K.L.Gautam Mechanic Grade-II hurled an iron rod at the truck driver Shri Amar Singh while turning towards Mohgaon, the iron rod broke the window glass and hit Shri Amarsingh. As the truck stopped, the arrested people in it jumped down and ran towards the police station where a large crowd had gathered. In para-11 he says that Shri S.Srivastava gathered some persons and started stopping the persons going to work in the first shift and also in the general shift. Shri S.Srivastava went inside the work place and threatened the workmen present thereof dire consequences and scared them away. In his cross-examination, Shri T.Bhowmic says he did not recollect whether Shri N.K.sharma was General Secretary of Union was against the strike. Ganpat MLA was group leader. The evidence of above witness about instigation to the employees for committing violent act is not shattered. In Para 31 the witness says that Shri S.Srivastava was arrested in morning of 14th March 88. Mr. Dixit was police Suptd. of Balaghat on date of incident. Similarly witness Shri Theb Singh Negi, Chandrabhan Chourey, Kunjilal, and N.P.Tiwari are supporting the allegation of management that workman S.Srivastava and N.K.Sharma were instigating workers for violent act. Their evidence is not shattered in their cross-examination.

16. The evidence of workman S.Srivastava on affidavit is by way of denial. When he was arrested by police as per evidence of management witness, his evidence that he was not present on 16-3-88 cannot be accepted considering the distance between Malajkhand and Balaghat, plea cannot be accepted. The evidence of workman Shri S.Srivastava and N.K.Sharma that strike was conducted peacefully and no violent act was committed is by way of denial. The positive evidence of witness of management is not shattered in their cross-examination. I find no reason to disbelieve their evidence given in respect of different incidents. No doubt, the incident of firing occurred at near by school, two employees died by police firing, but both the employees may not directly blamed argument were advanced that the students have supporting the strike could not be controlled by police and ultimately police resorted firing. There were 2 casualties of the employees. No doubt strike is right of the Union but said right is not absolute. If the striking employees resorts to violent acts like damaging the vehicles, setting fire to the residential bunglows of the Executive Directors threatening life of the family members of the Executive Directors. The leaders of employees leading strike had lost control on the employees participated in the strike. Leaders are expected to control such incidents. All those incidents of violence were result of speeches instigating workmen by Shri N.K.Sharma, S.Shrivastava.

17. When large number of employees were involved in strike, the satisfaction of management that enquiry couldnot be conducted in such case and service of workman are terminated under Clause 34 of the Standing order in the circumstances cannot be said illegal. The evidence of management's witness is sufficient to prove misconduct under clause (V to IX, XXII, LI) of standing orders alleged against workman. Their evidence is not shattered in cross-examination. In view of proved misconduct reinstatement of workman would not be proper. The ratio relied in Case of Jaipur Vidyut Vitran Nigam Ltd. And others versus Nathu Ram reported in 2010 LLR 97 relating to the reinstatement needs no detailed discussion. For the same reasons ratio held in Case of Union of India and others versus Mohd. Sharif Khan reported in 2006(4) MPHT 140(DB) cannot be beneficially applied to present case at hand. For reasons discussed above, I record my finding in Point No.1 in Affirmative.

18. **Point No. 2 :** In view of my finding in Point No.1, the management has adduced evidence regarding misconduct committed by workman is cogent and misconduct is proved, workman is not entitled to reinstatement or any relief. Punishment of workman cannot be said illegal. No interference is called for therefore I record my finding in Point No.2 in Negative.

19. That proceeding B/1/88 is clubbed with present reference. Perusal of proceeding B/1/88 shows that said proceeding is clubbed with present reference as per ordersheet dated 7-1-92. Application for consolidating present proceeding with R/117/90 was submitted on 3-1-92. The applicant management submitted that workman N.K.Sharma was Sr. Mechanic. He joined service on 27-2-78 on the basis of investigation and evidence on record relating to incidents of violence, burning of company's vehicle, setting house on fire. It was found that workman N.K.Sharma committed misconduct under clause V to IX, XX & LI of Clause 30 of certified standing orders. That enquiry under clause 33 of standing orders is not expedient i.e. his services are terminated by management exercising powers under Clause 34 of the order. Management prays approval of action of termination of services of N.K.Sharma under clause 33 2(b) of I.D.Act.

20. The application is opposed by workman N.K.Sharma filing detailed reply. He denies to have committed alleged misconduct. That making enquiry under clause 33 of Standing order, termination of his service is illegal. No ground are made out by management about security to the establishment of IInd party under clause 34 of the standing orders. That workman was sent to jail on 17-3-86. He was allowed anticipatory bail by Session Judge Balaghat on 22-3-88. He was not absconding. State Govt. was pleased to order judicial enquiry under commission of Enquiry Act, 1952 w.r.t. alleged incident therefore management was not justified in taking disciplinary action

against him. He was not on duty during relevant period. The incident in question donot take place on any grounds of service matters. He was not given opportunity of hearing by the management. The principles of natural justice are violated. His termination is made undue. Workman prays for rejection of application.

21. Rejoinder is filed by IInd party denying all material allegations of workman and supporting allegations of workman invoking power under clause 34 of the standing order. It is not possible to conduct enquiry under clause 33 of the standing orders. Allegations are denied. It is denied that State Govt. ordered judicial enquiry of the fact and circumstances of the entire incidents. IInd party prayed that contentions of workman be rejected and termination of workman be approved.

22. Following issues arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i)	Whether the management is entitled for approval of termination of Sri N.K.Sharma as prayed in B/1/88.	In Affirmative
(ii)	If so, to what relief the workman is entitled to?	As per final order.

REASONS

23. Both the cases are clubbed. Evidence is adduced in R/117/90. The evidence in both cases is adduced. Evidence of all management witnesses discussed above shows involvement of N.K.Sharma was leading strike. The evidence further shows the employees were instigated for committing violent acts by Shri N.K.Sharma and S.Srivastava . It is not necessary to discuss same evidence again. Legal position is clear that under Section 33(2)(b),

> "During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute, or where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman-
>
> (b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise that workman. Provided that no such workman shall be discharged or dismissed unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer."

8. Reference 117/90 relates to only dismissal of Shri S.Srivastava, legality of termination of non-applicant N.K.Sharma is not referred in said matter. Present application is directly filed invoking Section 33(C)(2)(b) of I.D.Act by management for approval of the dismissal of Non-applicant. Evidence discussed above is clear that workman N.K.Sharma was involved in instigating striking employees for act of violence abusive slogans. Clause 34 of the standing orders clearly allow power to management for termination of employees without following Clause 33 subject to giving notice or pay in lieu of notice. The dismissal of workman deserves to be approved. Accordingly I record my finding in Point No.1.

25. In the result, award/order is passed as under:-

(I) In Reference No. 117/90, award is passed that –

(i) The action of the management of Malanjkhand Copper Project of Hindustan Copper Ltd., PO Malanjkhand, Distt. Balaghat (MP) in dismissing the services of Shri Swatantra Shrivastava, H.E.M.E Operator, Grade II code No. 1769 Malanjkhand Copper Project w.e.f. 22-3-88 is legal and proper.

(ii) Relief prayed by workman is rejected.

(II) "Application in B/1/88 is allowed. Dismissal of Shri N.K.Sharma is hereby approved."

R. B. PATLE, Presiding Officer

नई दिल्ली, 29 मई, 2014

का.आ. 1603.—औद्योगिक विवाद अधिनियम, 1947(1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार गैस अथॉरिटी ऑफ इंडिया लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 133/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23/5/2014 को प्राप्त हुआ था।

[सं. एल-30012/49/2001-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 29th May, 2014

S.O. 1603.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 133/2001) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Gas Authority of India Limited and their workman, which was received by the Central Government on 23/5/2014.

[No. L-30012/49/2001-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/133/2001

Presiding Officer : Shri R. B. PATLE

Shri Zulfikar Ali,
S/o Shri Sikandar Ali,
R/o Sipahiyone, Imambada,
Purani Shivpuri,
Shivpuri (MP) .....Workman

Versus

General Manager,
Gas Authority of India,
PO Vijaypur,
Distt. Guja (M), Guna .... Management

AWARD

Passed on this 20th day of March, 2014

1. As per letter dated 6-8-2001 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No.L-30012/49/2001-IR(M). The dispute under reference relates to:

> " Whether the action of the management of General Manager, Gas Authority of India Ltd. in terminating the services of Sri Zulfikar Ali S/o Sikandar Ali w.e.f. 21-1-94 is justified? If not, to what relief the workman is entitled for?"

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 11 to 13. Case of Ist party workman is that he was appointed as Fireman Grade-II vide order dated 13-9-90. He was appointed after his selection. His service record was satisfactory. He worked continuously more than 240 days prior to termination of his services. That he could not attend duties sometimes as his wife was seriously ill. The Non-applicant was informed about it. The termination of his service is illegal and amounts to retrenchment. He was not paid retrenchment compensation before terminating his services. The principles of last come first go was not followed. IInd party violated provisions of Section 25-G, H of I.D.Act. Principles of natural justice were not followed. He was not given opportunity before terminating services. On such ground, workman is for his reinstatement with consequential benefits.

3. IInd party filed Written Statement at Page 16/1 to 16/12. IInd party submits that workman himself was lingering the matter. He filed statement of claim after more than 2 years. That workman was appointed on probation. He was discharged from service on 21-1-94. That the reference made by Govt. is illegal. That as per the conditions of appointment, the probation period can be extended by competent authority. His services were liable to be terminated without assigning reasons. Workman was not regular. He had habit of remaining absent unauthorisely. Warnings were issued to workman on 30-3-91, 23-7-92. His probation period was extended twice. Workman did not show any improvement during 3 years service. IInd party has denied all adverse contentions of workman. It is reiterated that workman was initially appointed as Fireman Grade-II on 25-8-90 on probation. As per Para-2 Clause-II, the probation period was liable to be extended at discretion of competent authority. During period of probation, his services were liable to be terminated without assigning reasons. It is further contended that workman remains unauthorisely absent during probation period. He was issued warnings twice. The period of his absence was for 123 days during 3-11-90 to 16-10-92. The warning was issued to the workman on 30-9-91. His explanation was called on 12-6-91, 24-6-92. He was issued warning on 23-7-92. Telegrams were issued to him for unauthorized absence on 25-1-93, 30-1-93, registered letters were sent advising him to join duty immediately, 3 telegrams were sent to workman for unauthorized absence.

4. That management submits that it is engaged in business of natural gas including transportation of natural gas and production and transportation of LPG. LPG is highly inflammable. Therefore the Fire and Safety activities assume greater importance and these personnel are required to play a major role in combating any sorts of eventually which may affect not only the workman employed in the establishment but the adjoining villages. The workman being posted in such a sensitivity discipline activities, had neither paid any heed to the advice of the superiors nor mend himself despite being counseled and warned in writing by the superior. He continued his habit of unauthorized absence. That termination of service is not covered under Section 25-F of I.D.Act. as per conditions in appointment order as workman was remaining unauthorized absence, his services are terminated during probation period. One month's pay Rs. 6519 was paid to him. The termination of workman doesnot suffer from any illegality. On such ground, IInd party prays for rejection of claim.

5. Workman filed rejoinder at Page 21/1 to 21/3. He has reiterated his contentions in statement of claim. He has further stated that on 2-11-90, there was leakage of chlorine gas from a valve of water filter plant. Hundreds of workers were working at the plant. Workman was directed by Head of Safety to go to the water filter plant and close the said valve. Accordingly he had closed the leakage of the gas. He had suffered badly from leakage of gas. He was advised to take rest. He was not completely recovered. He was facing lot of problems of lungs inhaling chlorine gas. That his wife was suffering from TB. He has taken his wife to Civil Hospital, Puna for treatment. He was unable to attend the management. Workman prays for his reinstatement with consequential benefits.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i)	Whether the action of the management of General Manager, Gas Authority of India Ltd in terminating the services of Sri Zulfikar Ali S/o Sikandar Ali w.e.f. 21-1-94 is justified?	In Affirmative
(ii)	If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

REASONS

7. Workman is challenging termination of his services for violation of provisions of I.D.Act. That he was not paid retrenchment compensation, principle of last come first go was not followed. IInd party denied allegation. As per IInd party workman was terminated as he was in habit of remaining unauthorisely absent from duties.

8. Workman filed affidavit of his evidence. He has stated that on 2-11-90 there was leakage of chlorine gas from valve of water plant. He had closed valve at the point of leakage. The Head of security had advised him to take rest as he was badly affected. Doctor advised him to take two weeks rest. That he suffered problems in neck and lung due to inhaling large quantity of gas. His wife was suffering from TB. He was taken to Civil Hospital. His wife died on 29-3-97. In his cross-examination workman says that he was not appointed in writing. He denies that repeated warnings were issued to him for his absence. He denies any memorandum was given to him by management. He further says that he was posted at Shivpuri, sometimes at Raghavgarh. He was on medical leave from 30-10-90 to 17-11-90. He denies that he was on medical leave without sanction. He admits that place of his appointment was at 100 kms from Shivpuri. There are hospitals at Raghavgarh at 3 kms distance. There is also Govt. hospital at Guna. He had suffered due to inhailing of chlorine on 2-11-90. He received treatment for his nose, eyes and head.

9. Management's witness Uttam Ade in his affidavit of evidence has stated that workman was appointed on probation. He remained unauthorisely absent. His probation period was extended. He had seen his service record. As per terms and condition of appointment, workman is terminated during probation period. In his cross-examination workman says probation period of workman was extended six times for six months period. Again witness says that probation period was extended twice. The receipt of the orders of extension of probation period are produced. Witness admits that extension of probation period is after one year, IInd extension was made after 26 months. He did not recollect after how much period the first order of extension of probation period was issued. The services of workman were not terminated, he was given opportunity. Even thereafter the workman did not resume work. That he had extended probation period of workman from 14-11-91 to 13-3-92. Workman was submitting medical certificates at joining of duty. The witness did not remember whether in 1990, there was leakage of chlorine gas from the plant. IInd management witness Dr. Smt. Mallika Ravi says that she had issued medical certificate for illness of his leg. That workman was never provided treatment for illness on account of gas leakage. That she had issued medical certificate Exhibits M-14, 14-A, B. said witness in her further cross-examination says that he was appointed on 7-9-90 as Medical Officer. Dr. Chandra Tripathi was her predecessor. Workman had shown his identity card because of which I recognized him as a worker of plant. She denies that Certificate Exhibits M-14, 14-B are fake. In 1993 workman has brought his wife for treatment of TB. Exhibit W-1 is reference slip, Exhibit W-2 is memorandum about medical expenditure for treatment of wife of workman. Exhibits W-3,4,5,6 also relates to treatment of wife of workman Sajda Bano. The copy of appointment letter is produced at Exhibit M-2. Workman was appointed on probation of one year. As per clause II, during probation period, services of workman are liable to be terminated without assigning reasons. The termination of service is covered under Clause-II of the appointment order. The probation period of workman was extended as per document M-3 for the period 14-9-91 for a period of six months. Document Exhibit M-4 shows absence of workman from duty, leave application etc. Exhibits M-5,6,7 is the inter report about assessment of probation period. Workman had submitted application M-8 requesting him to join on duty. He had assured to submit application for leave. Similar application was submitted by workman M-9,10,11. Document M-12 is notice served on workman for retrenchment of his service under Section 25-F. the copy of general terms and conditions of service is produced at Exhibit M-13. The termination order is produced at Exhibit M-15. Documents M-16,17 produced by management relating to the service performance. The workman was absent from duties many times unauthorisely as shown in Exhibit M-14. The application submitted by workman Exhibits M-8 to M-11 shows he was in habit of remaining absent without applications. The evidence discussed above shows that the service of workman was not satisfactory during probation period. It was the reason for terminating services of workman during probation period.

10. Learned counsel for management Shri Jain relies on ratio held in :

> "Case of Ksirhnadevaraya Education Trust and another versus L.A.Balakrishna reported in AIR 2001-SC-625. Their Lordship held employer has in terms of letter of appointment right to terminate his services. In order to avoid the allegations that order is stigmatic the employer should not state any reasons why services are terminated."

In present case, termination order of workman Exhibit M-15 nothing is stated stigmatic against the workman. There is no evidence that the termination of service of workman was by way of punishment.

In case of Sarbjit Singh versus Presiding Officer, Labour Court, Amritsar and others reported in 2012 LLR 46. Their Lordship dealing with Section 25-F and Section2(s) of I.D.Act, termination of service was challenged on ground that termination was in nature of punishment. The petitioners were probationers and were terminated during probation period. Their Lordship held probationer is not entitled to demand the reasons of termination. Cannot use the noting and constituting a siur or a stigma to demand an enquiry. Termination effected must be seen for the context of how the orders themselves read. Labour Court rightly held that their services could be terminated at any time and no stigma cast on them.

The ratio squarely covers the present case. The other citations are also submitted by learned counsel needs no discussion. Considering the evidence, the workman was terminated during probation period as his service record was not satisfactory. He was habitual in remaining unauthorisely absent. The termination of workman cannot be said illegal. Therefore I record my finding on Point No.1 in Affirmative.

11. In the result, award is passed as under:-

(1) The of the management of General Manager, Gas Authority of India Ltd in terminating the services of Sri Zulfikar Ali S/o Sikandar Ali w.e.f. 21-1-94 is legal and proper.

(2) Workman is not entitled to relief claimed by him.

R. B. PATLE, Presiding Officer

नई दिल्ली, 29 मई, 2014

का.आ. 1604.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन ऑयल कारपोरेशन लिमिटेड, मार्केटिंग डिवीज़न के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 74/09) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23/5/2014 को प्राप्त हुआ था।

[सं. एल-30012/13/2009-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 29th May, 2014

S.O. 1604.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 74/09) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Gas Authority of India Limited and their workman, which was received by the Central Government on 23/5/2014.

[No. L-30012/13/2009-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/74/09

Presiding Officer : SHRI R. B. PATLE

Ku. Vidyawati Ramswaroop Verma,
R/o 41/5, Malharganj,
Indore .....Workman

Versus

St. Depot Manager,
IOCL, Marketing Division,
Bulk Petroleum Depot,
Mangaliagaon,
Indore ....Management

AWARD

(Passed on this 31st day of March, 2014)

1. As per letter dated 28-8-09 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-30012/13/2009-IR(M). The dispute under reference relates to:

> "Whether the action of the management of Sr. Depot Manager, IOCL, Marketing division, Mangliagaon , Indore in obtaining resignation letter from Ku. Vidyawati Ramswaroop Verma under duress and influence is justified? What relief the workman is entitled to?"

2. After receiving reference, notices were issued to the parties. Workman filed statement of claim. The case of workman is that she was appointed on post of typist cum clerk at Mangaliagaon Depot as physically handicapped. Her appointment was against clear vacancy. She joined service on 30-9-99. That her mother fells seriously ill therefore she had to take leave to look after her mother. She had submitted application for leave giving the reasons. On 24-3-2000, it was Sunday, she was called by Depot Manager S.G. Alone. She was asked to sign some papers for regularizing her leave and thereafter payment was to be made. As she was in need for money for treatment for her ageing mother who was ill, she signed the papers on direction of the Officer. She was under impression that the cheque was of her salary. In April 2000, she came to join her duty in the office as her mother was discharged from hospital, she was surprised to know that some officer represented that she had resigned from service therefore she cannot be allowed to join. Workman thereafter submitted several representations but she was not allowed to join duty. Ultimately she raised the dispute under reference.

3. Management filed Written Statement. Case of IInd party management is that workman joined duty on 30-9-99 is not disputed. Workman was appointed under physically handicapped category. IInd party claims ignorance about

illness of her mother. That since her joining duty on 30-9-99, workman frequently remained absent from duty without intimation, prior approval. Workman was absent for 62 days from 1-10-99 to 1-12-99, 6&7-12-99 and 9-12-99 to 26-1-00 respectively for 2 days and 49 days. That on 8-3-00, workman sought leave for indefinite period. Then she tendered resignation of her own which was accepted by management. IInd party denied that on 24-3-00, workman was called by Sr. Dy.Manager S.G.Alone. That the leave taken by workman is the matter of record. It is denied that workman was compelled to sign the paper on say of Sr. Depot Manager S.G.Alone. IInd party reiterates that workman joined service on 30-9-99 and resigned on 26-4-00. There was unauthorized absence of workman. Workman was not justified in remaining absent from duty for long period. Workman herself submitted resignation on 25-3-2000. Workman was relieved w.e.f. 26-4-00. Management submits that lenient view was taken by management and regularized unauthorized absence of workman. That workman was directed to join duty on or before 12-4-00 failing which management would be constrained to take disciplinary action against her, no reply was received to the letter. Either workman had joined her duty instead he tendered her resignation on 25-3-00. Workman was absent from duty without sanctioned leave. Workman has not pleaded the date of submitting application for leave in her statement of claim. On such grounds, IInd party prays for rejection of the claim of workman.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i)	Whether the action of the management of Sr. Depot Manager, IOCL, Marketing division, Mangliagaon, Indore in obtaining resignation letter from Ku. Vidyawati Ramswaroop Verma under duress and influence is justified?	In Negative
(ii)	If not, what relief the workman is entitled to?"	As per final order.

REASONS

5. Workman is challenging termination of her service on account of resignation. According to workman, Sr. Depot Manager Mr. Alone obtained her signature under the pretext of regularizing her unauthorized absence from duty and payment of salary. Workman signed the document. Management denies above allegation of workman. It is contented that workman was frequently unauthorisely absent. She had voluntarily submitted resignation on 25-3-00. Workman was relieved w.e.f. 26-3-00. Workman filed affidavit of her evidence stating that on 24-3-00, Shri S.G.Alone. Dy. Manager called her in his chamber and asked her to sign in blank paper for regularizing her leave. As her mother was ill, she took further leave. In April 2000, when she resumed her duty again she was told by Manager about her resignation accepted on 26-4-00. She was not allowed to join duty. In her cross-examination, workman admits that he joined duty on 30-10-99. He was appointed in handicapped category, she denies that she was absent without intimation. That she has produced medical certificate about illness of her mother. She denied that she was absent from duty without intimation from 1-10-99 to 1-12-99. Workman claims he had given information on telephone. She had not obtained acknowledgement. She denied that she was unauthorisely absent from 9-12-99 to 26-1-00. She did not recollect whether on 8-3-00, she had orally requested for unlimited leave. That she was not given any directions on 15-3-00 about her unauthorised absence. She denies that on 25-3-00, she voluntarily submitted her resignation, she was relieved on 26-4-00.

6. Evidence of management's witness Praveen Kumar Shrivastava is on the point that workman was unauthorisely absent for 62 days from 1-10-99 to 1-12-99, 2 days from 6-12-99 to 7-12-99, for 49 days from 9-12-99 to 26-1-00. As workman again absented from duty without permission from 8-3-00, she was requested to join duty on or before 17-3-00 as per letter dated 15-3-00. Workman sought leave from 8-3-00 till indefinite period. Workman tendered resignation on 25-3-00. She resigned from service of corporation from 26-4-00. That workman was directed to join on or before 10-4-00 vide letter dated 29-3-00. Workman submitted representation after lapse of 1 year on 26-4-2001 requesting permission to join duty. Said letter was replied on 31-5-01. In his cross-examination management's witness says that there are certified standing orders governing conduct of workman. He shown his readiness to produce standing orders. For submitting resignation, one months notice is required. Resignation is forwarded to HR deptt. Appointing Authority is Sr.ER Manager. Depot Manager was not competent to process resignation. It was required that resignation letter normally addressed to the Competent authority. On 6-5-00, resignation of workman was accepted. The proposal for acceptance of resignation was till 18-5-00. He further says that in para-16 of his affidavit, the date of acceptance of his resignation is typing error.

7. Management's witness S.G.Alone in his affidavit has stated about date of appointment and unauthorized leave period. That on 25-3-00, workman tendered her signature. He identified signature of the workman. She was relieved w.e.f. 26-4-00. That he appraised consequences of resignation to workman that if her resignation is accepted by Competent Authority, she will lose job. He has told that she is not in a position to continue job due to her personal reasons. His further affidavit is devoted on proposal for acceptance was prepared on 18-4-00. The resignation was accepted. workman got amount of Rs. 22,262 towards final settlement. In his cross-examinatin, witness of management says workman was working under him when he was Sr. Depot Manager. The document

received from HR Deptt. Bombay. Proposal for acceptance of resignation dated 8-4-00 bears signature of Shri S.G.Patwardhan, Asstt. Manager Personnel, Mr. Hari Sr. E.R.Manager. The document is exhibited and proved. Other documents are marked M-3 to M-6. That appointing authority of workman was Chief Manager HR. That letter issued to workman about her unauthorized absence is not produced on record. DE was not conducted. He admits that workman had submitted application for leave. Leave was signed without pay. He denies that resignation is required to be addressed to Appointing Authority. He denies that on 25-3-00, he obtained signature of workman on blank paper. Witness volunteered that resignation letter was forwarded to Bhopal office. At that time he did not see any rules but he explained consequences orally. Witness claims ignorance whether there are rules about counseling period before acceptance of resignation.

8. The evidence of management's witness suffers from inconsistencies about the date of relieving workman. Documents Exhibits M-1, M-2 shows workman had requested to relieve her from 26-4-00. The proposal for acceptance M-2 doesnot bear signature of Shri S.G. Alone. During course of argument, learned counsel for IInd party Shri Shashi pointed out attention that letter Exhibit M-3 sent by workman on 26-4-01 after one year finds reference that workman had submitted resignation. Said letter Exhibit M-3 is carefully considered. She has stated that she had rendered one month's service. Thereafter she proceeded on long leave due to illness of her mother. She submitted leave application from time to time. Lastly due to continuous sickness of her mother and to look after her, she could not spare herself. Ultimately compelled to tender resignation without any alternative. Letter Exhibit M-3 is silent that her signature was obtained by Sr. Depot Manager on blank paper. Document M-4 is reply given to letter of workman Exhibit M-3. She was unauthorisely absent and tendered resignation. She was relieved w.e.f. 26-4-00. Her request for joining duty was not allowed.

9. Management has not produced application for leave submitted by workman. That workman was granted leave without pay, there was no reason for her to submit resignation. Evidence of both witnesses of management is silent about reasons for submitting resignation by workman. The letter issued by Sr. Depot Manager about her unauthorized leave is not produced on record. The evidence is tested by probabilities. The evidence of workman deserves to be accepted that there was no reason for submitting resignation by her. The salary of workman Rs. 22,262 was paid as per letter dated 4-10-2002 at Exhibit M-6. It corroborates evidence of workman that her signature was obtained on document for payment of her salary. MW-1 has not submitted copy of standing orders. When document Exhibit M-1 finds clear reference that workman requested to relieve w.e.f. 26-4-00, the proposal for acceptance of resignation was submitted on 18-4-00. It was not accepted on prior to 26-4-00. The signatures was finally made on 6-5-00. Thus the evidence of management about acceptance of resignation, reasons for resignation is not consistent.

10. Learned counsel for IInd party Mr. Shashi relies on ratio held in

Short note 12, 2003 LLR 618 on the point of resignation, termination of services because of abandonment by workers would come within the definition of retrenchment. That merely stating in the pleadings that employee has tendered resignation will not be sufficient without supporting it with evidence. The burden of proof substantiate lies on the concerned employee.

In the case of Nand Keshwar Prasad versus Indian Farmers Fertilizers Cooperative Ltd. And others reported in 1998 5 Supreme court Cases 461. Their Lordship of the Supreme court dealing with withdrawal of notice before date of resignation held permissible but in present case, workman is not pleading withdrawal of resignation. Her case is that her signature was obtained on blank paper by Sr. Depot Manager.

In 2003(5) Supreme court Cases 455 their Lordship of the Supreme Court dealing with resignation of, effective date of proof of acceptance held. Resignation becomes effective on acceptance even if the acceptance is not communicated. In present case, the acceptance of resignation was not communicated to the workman till reply given to her letter dated 26-4-01. Therefore ratio cannot be applied to case at hand.

Reliance is placed on ratio held in case of Laffans India Pvt. Ltd. Versus Pancham Singh Rawat and another reported in 2003-IV-LLJ-93 cannot be applied to present case at hand as the facts of said case are not comparable. Though in case before their Lordship, workman's plea was of forced resignation and not termination. The employers intention was of voluntary resignation. Labour Court accepted resignation voluntary then hold the resignation forced. Their Lordship held Labour Court's conclusion that it was forced resignation because workman's name was not in FIR is baseless and perverse. In present case, the workman was granted leave without pay prior to the alleged resignation, she had no reason to submit resignation. The letter issued by Sr. Depot Manager abut unauthorized absence of workman is not produced, the applications for leave submitted by workman are not produced. Workman's salary was paid as per Exhibit M-6 in 2006. Thus circumstances corroborates evidence of workman that her signature was obtained by Sr. Depot Manager on blank paper.

The ratio held in case of J.K.Cotton Spinning and Weaving Mills Co.Ltd. Kanpur versus State of UP reported in AIR 1990-SC-1808, their Lordship held that termination of service by acceptance of resignation doesnot amount to retrenchment but covered under voluntary retirement. Ratio cannot be applied beneficially to present case as the controversy between parties is different.

Learned counsel for IInd party Mr. Shashi also pointed out my attention to award passed in R/139/93. In said case, the appointment of workman was subject to verification of genuiness of service card. After verification of service card submitted by workman was found bogus. The facts of the present case are not comparable and therefore identical view cannot be taken in the matter.

11. Learned counsel for Ist party workman Shri R.C. Shrivastava also relies in employees of the Bharat Bank versus Bharat Bank Ltd. on 1st March, 1950. The judgment is devoted to the powers of Tribunal exercising quasi-judicial functions. The powers of this Tribunal are not in question. The controversy between parties relates to whether termination of service of workman by accepting resignation of workman is legal. As discussed above, evidence of management's witness is inconsistent on several points. Workman was handicapped and fortunate to get employment. Her leave applications were granted without pay. There was absolutely no reason to submit resignation from service. Management has not produced any rules or standing orders. The Sr. Depot Manager while forwarding resignation of workman under Exhibit M-5 has not made remark that the workman was appraised of the consequences of resignation. Evidence of management's witness is not corroborated by document Exhibit M-5. Salary was paid to workman as per letter Exhibit M-6 on 4-10-02. Above evidence shows that workman was not given any time for reconciliation. She signed on the documents believing that it pertains to regularization of her absence and payment of salary therefore the alleged resignation accepted by management cannot be said legal. The termination of service of workman by accepting her resignation cannot be said legal. Therefore I record my finding in Point No.1 in Negative.

12. **Point No. 2-** In view of my finding in Point No.1, question arises whether workman is entitled for reinstatement with back wages. The evidence of workman shows that she was not allowed to join duty telling that her resignation was accepted on 26-4-00. Workman was on leave for taking care of her mother. Subsequently her mother died, date is not given. Workman has not stated what she was doing after acceptance of resignation. Her affidavit is silent on the point of her employment. Considering above aspects in my considered view as termination of workman was on account of acceptance of resignation illegally, reinstatement with 30 % back wages would be appropriate. Accordingly, I record my finding in Point No. 2.

13. In the result, award is passed as under:-

(1) The action of the management of Sr. Depot Manager, IOCL, Marketing division, Mangliagaon , Indore in obtaining resignation letter from Ku. Vidyawati Ramswaroop Verma is not legal and proper.

(2) IInd party is directed to reinstate workman with continuity of service with 30 % back wages.

R. B. PATLE, Presiding Officer

नई दिल्ली, 29 मई, 2014

का.आ. 1605.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार नई इंडिया अस्यूरेन्स कंपनी लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 12/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23/5/2014 को प्राप्त हुआ था।

[सं. एल-15025/1/2014-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 29th May, 2014

S.O. 1605.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 12/2013) of the Central Government Industrial Tribunal/Labour Court, Lucknow, now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of New India Assurance Company Limited and their workman, which was received by the Central Government on 23/5/2014.

[No. L-15025/1/2014-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

Present : Dr. MANJU NIGAM, Presiding Officer

I.D. No. 12/2013

BETWEEN

Shri Ram Bahadur Maurya
S/o Shri Mahavir Maurya,
Village – Pure Bhujwan Hamin Mau,
PO – Bela Bhela, Uttar Para,
Distt. Raibareilly

AND

1. Branch Manager
New India Assurance Company Limited
Raibareilly

2. Branch Manager
New India Assurance Company Limited
18/7 A, C.K. Cotton Mill Crossing
Naini, Allahabad.

3. Regional Manager
New India Assurance Company Limited
15/60, Green House, Civil Line
Near M.G. College,
Kanpur.

AWARD

1. The present industrial dispute has been filed by the workman, Shri Ram Bahadur Maurya S/o Shri Mahavir Maurya, Village – Pure Bhujwan Hamin Mau, PO – Bela Bhela, Uttar Para, Distt. Raibareilly and the Branch Manager, New India Assurance Company Limited, Raibareilly & the Branch Manager, New India Assurance Company Limited, 18/7 A, C.K. Cotton Mill Crossing, Naini, Allahabad & the Regional Manager, New India Assurance Company Limited, 15/60, Green House, Civil Line, Near M.G. College, Kanpur for adjudication before this CGIT-cum-Labour Court, Lucknow.

2. The case of the workman, in brief, is that the workman, Ram Bahadru Maurya was appointed as regular worker with the opposite Party No. 1 on 01.03.1991 and was transferred to the opposite Party on 15.06.98; and accordingly he joined with the opposite party No. 2. It is stated by the workman that he requested for regularization as per departmental Rules; but the management did not pay any heed to his request, which led to filing of Writ Petition No. 37491/2000 before Court. It has been alleged by the workman that the management got annoyed with the workman and retrenched his services w.e.f. 07.06.2000 without complying with the mandatory provisions of the Industrial Disputes Act, 1947 i.e. giving notice or notice pay in lieu thereof or any retrenchment compensation; in spite of the fact that he worked for more than 240 days in each year. Accordingly, the workman has prayed that he be reinstated with consequential benefits including back wages and seniority above his juniors.

3. The copy of statement of claim was sent to the opposite parties by the workman itself prior to filing the case before this Tribunal; accordingly the registered notice was issued to the management, directing to file its written statement on 13.03.2013. The management failed to comply with the orders and did not turn up to file its written statement on 13.03.2013. When the opposite party did not turn up on subsequent dates i.e. 01.04.2013 & 26.04.2013, another registered notice was issued to the management for filing of its written statement on 06.06.2013. The management filed its authority on 06.06.2013 in favour of one Shri Jitendera Narayan Mishra, advocate and sought time for filing of written statement; accordingly, 01.08.2013 was fixed for written statement. The management again remained absent on 01.08.2013 and 19.09.2013 was fixed for written statement. On 19.09.2013 the management again moved adjournment, fixing, 11.10.2013 for written stamen. The management remained absent on following dates i.e. 11.10.2013 and 28.11.2013. On 28.11.2013 when the management did not turn up for filing of written statement, the case was ordered to proceed ex-parte, and next date 20.01.2014 was for ex-parte evidence. On 20.01.2014 the workman field its evidence and 21.02.2014 was fixed for arguments.

4. The management again refrained to attend the proceedings on 21.02.2014 and 02.204.2014; and accordingly, the ex-parte arguments of the workman's representative were heard. The file was reserved for award, keeping in view long pendency of the case and reluctance of the management to contest their case.

5. Heard argument of the representative of the workman and perused entire material available on record.

6. The workman has come up with the case that he was appointed as regular worker with the opposite Party No. 1 on 01.03.1991. When the management did not regularized his series he took shelter of Hon'ble High Court, which rejected his case on alternate remedy. It is also the case of the workman that the management retrenched his services w.e.f. 07.06.2000, ignoring the fact that he worked for more than 240 days in each year and without complying with the mandatory provisions of the Industrial Disputes Act, 1947 i.e. giving notice or notice pay in lieu thereof or any retrenchment compensation.

7. The workman has field its evidence on affidavit, reiterating its version in the statement of claim. The management has not filed any evidence in rebuttal thereof.

8. In his evidence the workman has filed the photocopies of certain certificates without date, purported to be in support of his claim that he worked with the opposite party for the alleged duration. There is no rebuttal from the management of above certificates. The workman has riled on Gyanendra Pal Singh & Others Vs. Cane Commissioner & Others 2009 (123) FLR 201. Wherein Hon'ble High Court, Allahabad has observed as under:

> "6. Since no counter affidavit has been filed till date, the ground taken in the writ petition are taken to be correct in view of the decisions rendered in Choksi Tube Company Limited Vs. Union of India, Naseem Bano Vs. State of U.P. and Others."

In view of the case law cited above, and relying on the photocopy of the certificates filed by the workman, it comes out that the services of the workman have been availed as temporary peon for the period 1991 to 1998, then from 15.06.1998 to 31.12.1999 on daily wages. The Hon'ble High Court in its order dated 21.07.2011 has endorsed this fact that the workman in its writ petition has contended that he was a daily wager peon.

9. The workman has pleaded that his services have been terminated in utter violation to the provisions of Section 25-F of the Act, without giving him any notice or notice pay in lieu thereof or any retrenchment compensation. In Surenderanagar Panchayat and another Vs. Jethabhai Pitamberbhai 2005 (107) FLR 1145 (SC) Hon'ble Apex Court came to the conclusion that where the workman could be entitled for the protection of Section 25-F of the Industrial Disputes Act, 1947 provided he is successful in establishing the fact that he had been in employment with

the employer for a period of 240 days uninterruptedly. It was held by the Hon'ble Supreme Court that in such cases, the scope of the enquiry before the Labour Court was confined only to 12 months preceding the date of termination to decide the question of the continuous service for the purpose of section 25-F of the Industrial Disputes Act, 1947.

In Asstt. Engineer Rajasthan Dev. Corp. & another Vs. Gitam Singh 2013 9136) FLR 908 Hon'ble Apex court observed that there was violation of Section 25-F of the Industrial Disputes Act, 1947, where the services of a daily wager was terminated by an oral order, who worked for 240 days. Also, in L. Robert D'Souza case (1982) 1 SCC 645 Ho'nble Supreme Court held that Section 25-F of the ID Act is applicable to a daily rated worker.

In the present case, in view of non-rebuttal from the management to the evidence filed by the workman, it is taken that the workman worked for 240 days in the 12 months preceding the date of termination i.e. 07.06.2000 and he was not given any notice or notice pay in lieu thereof or any retrenchment compensation while retrenching his services in violation to the provisions of Section 25-F of the Act.

10. Now, it is to be considered as to whether the workman is entitled for reinstatement and other benefits as prayed by him in his statement of claim. From the evidence produced by the workman it is not proved that he was appointed as a regular worker. As per the photocopy of the documentary evidence relied by the workman it is established that he had worked with the management of New India Assurance Co. Limited as daily rated temporary peon. Admittedly, the services of the workman were terminated on 07.06.2000. In Haryana Roadways Vs. Rudhan Singh (2005) 5 SCC 591; 2005 SCC (L&S) 716 Hon'ble Apex Court while considering the question regarding award of back wages has observed:

> "There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded ..... . However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. Another important factor, which required to be taken into consideration, is the nature of employment. A regular service of permanent character cannot be compared to short or intermittent daily wage employment though it may be for 240 days in a calandar year."

11. In Deepak Ganpat Tari Vs. N.E. Theater Pvt. Ltd. 2008 (119) FLR 877 Hon'ble Bombay High Court relying on the Hon'ble Apex Court's judgment in A P V K Brahmandandam 2008 (117) FLR 1086 (SC) Telephone DM Vs. Keshab Deb 2008 (118) FLR 376 (SC) JDA Vs. Ram Sahai 2006 (111) FLR 1178 (SC), while awarding compensation of Rs. 1,50,000 to the concerned workman considering his daily wages as Rs. 45/- in view of the fact that the workman had put in about 3 years of service, has observed as under:

> "It is apparent that termination of services of a daily wager does not amount to retrenchment and for violation of section 25-F in such circumstances, the employee cannot be given benefit of reinstatement with continuity and back wages. Hon'ble Apex Court has hold that in such circumstance employee is entitled to benefit of compensation only."

12. Also, in Jagbir Singh Vs. Haryana State Agriculture Mktg. Board (2009) 15 SCC 327 : (2010) 1 SCC (L&S) 545: Senior Superintendent Telegraph (Traffic), Bhopal Vs. Santosh Kumar Seal and Others (2010) 2 SSC (L&S) 309 Hon'ble Apex Court has observed as under:

> "However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.
>
> The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded."

13. In the light of principle laid down in aforementioned case laws, it would not be just and proper to direct that the workman be reinstated in service. The ends of justice would meet by paying compensation to the workman instead in place of relief of reinstatement in service.

14. In view of the discussions made hereinabove, it is established that the services of the workman were availed by the management of New India Assurance Company Limited as daily wager and he worked for more than 240 days preceding one year from the date of his alleged termination; and also that his services were terminated by oral order without giving him any notice, notice pay or any retrenchment compensation, in utter violation of provisions of Section 25 F of the Act. Hence, having regard to these facts that the workman has worked as daily wager only and he was getting Rs. 50/- per day at the time of his alleged termination and keeping in view the entire facts of the case and the law, the interest of justice would be subserved, if, management is directed to pay lump sum amount of compensation only.

15. Accordingly, the management is directed to pay a sum of Rs. 1,00,000/- (Rupees One Lakhs only) to the workman, Ram Bahadur Maurya as compensation for termination of his services in violation of section 25 F of the I.D. Act. The said amount shall be paid to the workman within 06 weeks of publication of the award, failing which; the same shall carry simple interest @ 6% per annum.

16. Award as above.

Dr. MANJU NIGAM, Presiding Officer

LUCKNOW
11th April, 2014

नई दिल्ली, 29 मई, 2014

का.आ. 1606.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार गार्डन रीच शिप बिल्डर्स एंड इंजीनियर्स लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या 04/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23/5/2014 को प्राप्त हुआ था।

[सं. एल-32011/5/99-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 29th May, 2014

S.O. 1606.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 04/2002) of the Central Government Industrial Tribunal/Labour Court, Kolkata now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Garden Reach Ship Builders & Engineers Limited and their workman, which was received by the Central Government on 23/5/2014.

[No. L-32011/5/99-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 04 of 2002

Parties : Employers in relation to the management of Garden Reach Ship Builders and Engineers Ltd.

AND

Their workmen

Present : JUSTICE DIPAK SAHA RAY, Presiding Officer

Appearance :

On behalf of the Management : Mr. R. De, Ld. Advocate

On behalf of the Workman : None

State : West Bengal Industry : Airlines.

Dated : 6th April, 2014

AWARD

By Order No.L-32011/5/99-IR(M) dated 27.02.2002 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

> "Whether the action of the management of Garden Reach Ship Builders & Engineers Ltd. in dismissing Sh. Bijayananda Roy from service w.e.f. 30.6.94 is legal and justified? If not, to what relief the workman is entitled?"

2. When the case is taken up today for hearing, none appears on behalf of the union/workman inspite of specific order of the last date, i.e., on 19.03.2004, though the management is represented by its Ld. Counsel.

3. Considering the above conduct of the union it may reasonably be presumed that the union does not want to proceed with the case further. Perhaps at present the union has got no grievance against the management.

4. In view of the above, instant reference case is disposed of by passing a "No Dispute Award".

JUSTICE DIPAK SAHA RAY, Presiding Officer

Kolkata
The 6th April, 2014.

नई दिल्ली, 29 मई, 2014

का.आ. 1607.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन रेयर अर्थ्स लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोचीन के पंचाट (संदर्भ संख्या 1/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23/5/2014 को प्राप्त हुआ था।

[सं. एल-29011/26/2008-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 29th May, 2014

S.O. 1607.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1/2010) of the Central Government Industrial Tribunal/Labour Court, Cochin now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Indian Rare Earths Limited and their workman, which was received by the Central Government on 23/5/2014.

[No. L-29011/26/2008-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present : Shri D. Sreevallabhan, B.Sc., LL.B, Presiding Officer

(Monday the 28th day of April, 2014/8th Vaisakha, 1936)

ID 1/2010

Unions : 1. Shri B Baiju
General Secretary
IRE Mining Civil Workers Congress (INTUC) Vellanthuruthu
Cheriazheekkal
Karunagappally

2. Shri G P Sanil
General Secretary
IRE Area Constructions & General Workers Union (AITUC),
Vellanthuruthu
Cheriazheekkal Post Karunagappally

3. Shri K Suresh
General Secretary
IRE Mining Workers Union
Vellanthuruthu Cheriazheekkal PO
Karunagappally

4. Shri Subhajan V
Convener
IRE Mining Civil Forum Workers Union (BMS)
Vellanthuruthu
Cheriazheekkal PO
Karunagappally

5. Shri K Vijayalal
Secretary
Karunagappally Taluk General Workers Union (UTUC),
Vellanthuruthu
Cheriazheekkal Post Karunagappally

6. Shri C Lalji Prasad
General Secretary
IRE Mining & Loading Workers Union (UTUC-B)
Vellanthuruthu
Cheriazheekkal PO
Karunagappally

7. Shri Solomon Netto
Secretary, IRE Civil Workers Union (CITU) Vellanthuruthu
Cheriazheekkal PO Karunagappally

By M/s.H B Shenoy Associates
(for 1to 4 and 6 & 7 Unions)

Managements : 1. The Head
Indian Rare Earths Limited
Chavara PO
Distt. Kollam (Kerala) – 691583

By M/s.Menon & Pai

2. The President
M/s. IRE Mining Area Civil Contract Workers Welfare Forum C/o IRE Ltd.,
Chavara Kollam,
Chavara (Kerala) – 691583

3. The Secretary
M/s. IRE Mining Area Civil Contract Workers Welfare Forum
C/o IRE Ltd., Chavara
Kollam (Kerala) – 691583

By Advs. Shri Paulson C Varghese & Shri Baby Joseph
(for 2nd& 3rd Managements)

This case coming up for final hearing on 11.04.2014 and this Tribunal-cum-Labour Court on 28.04.2014 passed the following :

AWARD

In exercise of the powers conferred by clause (d) of sub-section(1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Government of India/Ministry of Labour vide Order No. L-29011/26/2008-IR(M) dated 18.11.2009 referred this industrial dispute for adjudication to this tribunal.

2. The dispute is:

1. "Whether the action of the IRE Mining Area Civil Contract Workers Welfare Forum, a subordinate body constituted by the management of Indian Rare Earths Ltd., in not acceding the request of the workers to convert the mutual understandings arrived by them on 6th March, 2008 and 5th April, 2008 without complying Rule 58(4) of the Industrial Disputes (Central) Rules to a legally valid conciliation settlement is justified?"

2. "Whether the demand of the raw-sand Loading workers of the IRE Mining Area Civil Contract Workers Welfare Forum, working in Vellanathuruth and Ponmana Mines of Indian Rare Earths Ltd. Chavara for declaring the weekly holidays and public holidays in the establishments as holidays with wages is justified?"

3. After service of summons to all the parties unions 1 to 4, 6 & 7 and all the three managements entered appearance. 5th union did not appear and has not participated in the proceedings.

4. In the claim statement filed by the contesting unions, after stating that the first of the two issues referred for adjudication stands resolved by the Long Term Settlements dated 06.03.2008 and 05.04.2008 and hence does not require

any adjudication, it is alleged that the second issue has been raised by the unions in respect of the workmen of the first management working in the "Mycaud" category in the first management's mines in Block-IV of Chavara Deposit which forms part of Vellanathuruth Ward of Alappad Grama Panchayat and Ponmana Ward of Ponmana Grama Panchayat. They are employed for loading raw sand collected from the mines into the lorries for being transported to the first management's plant at Chavara for processing. They have been continuously and regularly working ever since 1993. Their work is of perennial in nature and is essential for the sustenance of the first management's activities and operations. Except those workmen all other workmen and employees of the first management are afforded the benefit of all holidays including weekly holidays and public holidays as holidays with wages. They are only being denied of wages for the holidays. It is discriminatory and illegal and is also against the prevalent practice and norms in the industry. Denial of such a benefit of wages for holidays is unjust and unfair and is an unfair labour practice prohibited under the provisions of Industrial Disputes Act, 1947. They are also entitled to the benefit of holidays with wages as in the case of the other workmen and employees of the first management. Even though they are entitled to get the benefit from the date of entry in service they confine their claim for it from 24.04.2008, the date on which the charter of demands was made by the unions relating to this industrial dispute. The claim is legal, just and bonafide and hence they are entitled to get it allowed.

5. In the written statement filed by the first management it is admitted that the first issue referred for adjudication was resolved as per the Long Term Settlements. For the purpose of considering the second issue it is contended that the workmen concerned in the reference are not the workmen of the first management. They are members of the second management. There exists no master and servant relationship between them and the first management. Being the members of the second management they cannot raise a dispute against the first management for treating them on par with its permanent employees for the benefits extended to them like weekly holidays and public holidays. The first management is a Govt. of India undertaking and is having two units in the State of Kerala, one at Chavara in Kollam District and the other at Udyogamandal in Ernakulam District. It is engaged in mining and separation of minerals from the beach sand available in the coastal areas between Neendakara and Kayamkulam. It started production in the year 1970 and as part of the production activities it is doing mining work at the Vellanathuruth Ward of Alappad Panchayat and at the Ponmana Ward of Ponmana Panchayat. As there was obstruction from the local people for carrying out the work by making demand to give them employment revenue authorities intervened in the matter and after detailed discussions an understanding was reached on 26.08.1993 as per which 50 persons from the locality were agreed to be engaged for construction works under the first management in the mining sites at Vellanathuruth on condition that they would be given preference in the future vacancies. Thereby the second management forum was constituted in the year 1997 by registering it under the Travancore Cochin Literary Scientific Charitable Societies (Registration) Act, 1955. It is governed by the provisions of its bye-law and is managed by the governing body consisting of the representatives nominated by the first management and the representatives of the trade unions of the members of the Forum. The service conditions of the members of the second management are governed by Long Term Settlements entered into between the second management and the unions who raised the dispute. At the time of formation of the second management there were 55 members nominated by the various unions. First management was in cooperation with the formation of the second management to avoid further loss and meeting the law and order situation in the area. At that time unions agreed not to raise any claim for employment with the first management. Later 14 more persons were also enrolled as members of the Forum. During the year 2000 when a new mining site was opened at Ponmana 180 persons were also enrolled as members through the intervention of the revenue authorities. The members of the second management are not engaged for any work in connection with the main activities of the first management. The work is not of perennial nature. The first management can run its mining operations at Vellanathuruth and Ponmana even without those members of the second management. As per the terms of Long Term Settlements various benefits were extended to them including public holidays with wages. Second management is complying with the requirements under the various statutes. None of the workers of the second management has to work for more than six days in any week. They are eligible to get wages only for the days of their engagement. As in the case of similar other establishments they cannot seek benefits given to the permanent employees of the first management. They are engaged for loading work by the second management for the contractors. They are not engaged in "Mycaud" category under the first management. The permanent employees of the first management are monthly rated employees and the members of the second management whose service conditions are governed by the Settlements cannot claim similar benefits. Extension of benefits to the members of the second management is purely a matter in between the second management and the trade unions representing its members. The unions cannot claim wages for public holidays and weekly holidays from the first management either retrospectively or from 24.04.2008. Hence the unions are not entitled to get any relief claimed in the claim statement.

6. Managements 2 & 3 did not file any written statement.

7. No rejoinder was filed by the unions even though opportunity was given.

8. For the purpose of deciding this reference one witness was examined as WW1 and Ext.W1 was marked from the side of the union. For the first management one witness was examined as MW1. One witness was examined as MW2 for the second management and Exts.M2 and M3 were marked. As they were mistakenly marked as M2 and M3 it was corrected as M1 and M2 as per order dated 04.04.2014.

9. The points for determination are:-

(i) Whether the first issue referred for adjudication as per the reference requires any consideration?

(ii) Whether the workmen involved in this reference are the workmen of the first management?

(iii) Whether their demand for declaring the weekly holidays and public holidays in the establishment as holidays with wages is justified?

(iv) What relief, if any, the workmen are entitled to?

10. **Point No. i :** It is unequivocally stated in the claim statement as well as in the written statement filed by the first management that the first issue in the reference does not require any consideration as it is resolved as per the Long Term Settlements dated 06.03.2008 and 05.04.2008 entered into between the unions and the second management. There is also a prayer in the written statement to pass an award on that issue holding that it was settled and does not require any adjudication. As there exists no dispute relating to that issue now it does not require any consideration.

11. **Point No. ii** : It is the specific case of the unions that the workmen involved in this reference are the workmen of the first management. After denying it in the written statement the first management would contend that they are the members of the second management Forum and they are not engaged for any work in connection with the main activities of the first management. In order to prove that they are the workers of the first management union relies on Ext.W1 (referred to as Ext.A1 in the proof affidavit of WW1), copy of the award dated 04.06.2010 in ID 158/ 2006 of this tribunal. The dispute in that case was with regard to the regularisation of 68 workmen. It was raised by the same unions against the managements in this case. In that case also first management contended that those workmen are the employees of the second management. It was negatived by this tribunal after considering it on merits and entered into the finding that those workmen are casual workers of the first management. Learned counsel for the unions has submitted that the second management is only a paper organisation created by the first management to deny the benefits to the workers and that the finding in that case that the workmen are the casual workers of the first management is binding on the parties as it has become final. Nothing was argued by the learned counsel for the managements to controvert the same. Learned counsel for the first management was fair enough to submit that since the parties in that case are the same and the award has become final the findings in that case have become conclusive. There is nothing wrong in placing reliance on Ext.W1 to hold that the workers of the second management forum are the casual labourers of the first management. As there is the express finding in Ext.W1 that they are the workmen of the first management there is no necessity to have a detailed discussion of the oral evidence in this case. It is also clear from the reference itself that the second management is a subordinate body constituted by the first management. Hence it is found that the workers involved in this reference are the casual workmen of the first management.

12. **Point No. iii :** The demand of the unions is for declaring the weekly holidays and public holidays as holidays with wages. In the claim statement the allegation made to support it is that all other employees of the first management are having the benefit of weekly holidays and public holidays with wages. It is already found that the workmen involved in this reference are only the casual workers of the first management. They are not regular employees of the first management. They cannot claim that they have to be given all service benefits on par with the regular employees of the first management. It is also pertinent to note that their service conditions are governed by Long Term Settlements entered into between the unions and the second management. It is the case of both the parties that their conditions of service are based on such Long Term Settlements. Exts.M1 and M2 are the copies of two Long Term Settlements and the same were produced by the second management to prove the conditions of service of those workmen. Ext.M1 is the settlement entered into on 3rd November, 2010 and Ext.M2 is another settlement entered into on 12th November, 2010 between the unions and the second management. As per those settlements the workmen are given the benefit of 12 public holidays with wages including May Day, Independence Day, Gandhi Jayanthi, Republic Day and Thiruvonam. It is now not in dispute that they are given weekly holidays without wages. They want to have all holidays with wages. The only reason stated in the claim statement for that claim is that they are entitled to the benefits of the regular employees of the first management. The casual workers cannot be equated with the regular employees for claiming service benefits. Their conditions of service are based on mutual agreement by entering into Long Term Settlements. They can claim the benefits as per the terms of those settlements. They cannot be heard to say that they are to be on par with regular employees for service benefits. It cannot be said that there is any

discrimination. There is absolutely no evidence in this case to prove that other casual workers of the first management are getting all the public holidays and weekly holidays with wages. MW1 has expressly stated that there is no casual worker under the first management. The members of the second management forum are found to be the casual workmen of the first management only when the demand for regularisation was made by them. Their service conditions are governed by the terms of the Long Term Settlements and any change can be made only through the proper procedure provided under law.

13. At the time of argument learned counsel for the unions has argued that they are entitled to get weekly holidays with wages in view of Section 28 of the Mines Act, 1952 and Rules 23 and 24 of the Minimum Wages (Central) Rules, 1950. There is no plea with regard to it in the claim statement. The applicability of those provisions is a mixed question of law and fact. There must be specific pleading with regard to the same. Such a case was put forward for the first time in the proof affidavit of WW1. In the absence of any specific pleading no amount of evidence is to be looked into to consider the question of the applicability of those provisions. It is to be pointed out that Section 28 of the Mines Act, 1952 only provides weekly holidays and not weekly holidays with wages. Whether the mines of the first management will come within the purview of the Minimum Wages Act, 1948 also requires adjudication being a mixed question of law and fact. Without any pleading with regard to it, it does not deserve any consideration in this case.

14. As the workman involved in this reference are casual workers governed by the Long Term Settlements with regard to their conditions of service they are not entitled for declaration that the weekly holidays and public holidays are to be with wages.

15. **Point No. iv :** In the result an award is passed holding that there exists no dispute with regard to the first issue in the reference and that the demand of the workmen for declaring the weekly holidays and public holidays as holidays with wages is not justified. Hence they are not entitled to any relief.

The award will come into force one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 28th day of April, 2014.

D. SREEVALLABHAN, Presiding Officer

APPENDIX

Witness for the Union Nos.1 to 4 and 6&7

WW1 - Shri B Baiju 22.04.2013

Witness for the First Management

MW1 - Shri A Jeyapalan 15.07.2013

Witness for the Second and Third Managements

MW2 - Shri Sunil Sebastian 06.01.2014

Exhibit for the Union Nos. 1 to 4 and 6 & 7

W1 - True Copy of the Award dated 04.06.2010 in ID No.158/2006 of the CGIT-cum-Labour Court, Ernakulam

Exhibit for the First Management NIL

Exhibits for the Second and Third Managements

M1 - True copy of the agreement dated 03.11.2010 executed between the representatives of the 2nd management and trade unions

M2 - True copy of the agreement dated 12.11.2010 executed between the representatives of the 2nd management and trade unions.

नई दिल्ली, 29 मई, 2014

का.आ. 1608.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारत पेट्रोलियम कारपोरेशन लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, मुंबई के पंचाट (संदर्भ संख्या 34/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23/5/2014 को प्राप्त हुआ था।

[सं. एल-15025/1/2014-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 29th May, 2014

S.O. 1608.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 34/2012) of the Central Government Industrial Tribunal/Labour Court-1, Mumbai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bharat Petroleum Corporation Limited and their workman, which was received by the Central Government on 23/5/2014.

[No. L-15025/1/2014-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1 MUMBAI

Present : JUSTICE S.P. MEHROTRA, Presiding Officer

Reference No. CGIT-1/34 of 2012

Parties : Employers in relation to the management of Bharat Petroleum Corporation Limited

And

Their workmen

Appearances :

For the first party/ Management : Mr.R.S.Pai, Adv.

For the Union : Shri Nitin Karanje, Gen.Secretary

State : Maharashtra

Mumbai, dated the 3rd day of April, 2014

AWARD

1. The present reference has been made by the Central Government by its order dated 22.4.2013 passed in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947. The terms of reference as per the schedule to the said order are as under:

> "Whether the demand of Petroleum Employees Union, Mumbai for payment of computer allowance to Tallymen (Checkers) at Sewree Installation w.e.f.1.9.2010 for merely working on 'ZPDP' Application is legal, just and proper? What relief the workmen are entitled to?"

2. On 2.4.2014, an application dt.13.3.2014 jointly signed by Shri R.S.Pai learned counsel for the first party/ Management and Shri Nitin Karanje, General Secretary, Petroleum Employee's Union (Second Party/ Union) was filed.

3. By the order dated 2.4.2014, the case was fixed for 3.4.2014 i.e. today for filing a copy of Memorandum of Settlement mentioned in the aforesaid application.

4. Pursuant to the order dt.2.4.2014, the case is put up today. Shri Tuhin Sarkar, Asstt.Manager (Employees Relations), Bharat Petroleum Corporation Limited, representative for the first party/Management is present. Shri Nitin Karanje, General Secretary, Petroleum Employees' Union (Second Party/ Union) is also present. Memorandum of Settlement dt.9.1.2014 has been filed today alongwith an application dt.2.4.2014 jointly signed by Shri R.S. Pai, learned counsel for the first party/Management and Shri Nitin Karanje, General Secretary, Petroleum Employees Union (Second Party/ Union).

5. Shri Tuhin Sarkar, representative for the first party / Management and Shri Nitin Karanje, General Secretary, Petroleum Employees' Union (Second Party/ Union) jointly state that in view of the Settlement as contained in the aforesaid Memorandum of Settlement, the dispute as contained in the above Reference no longer survives.

6. The aforesaid application dt.13.3.2014, filed on 2.4.2014, states as under in paragraph 1 and 2 of the said application:

> "1. That our Union alongwith the other 8 Unions operating in Marketing have entered into a Memorandum of Settlement dated 9.1.2014 before the Conciliation Officer and Chief Labour Commissioner (Central), New Delhi under Section 12(3) read with 18(3) of the Industrial Disputes Act, 1947, settling all the issues and disputes pending between the Marketing Unions and the Respondent company.
>
> 2. As the issue involved in the above reference is settled in terms of the aforesaid Memorandum of Settlement, the dispute no longer survives and therefore be disposed of accordingly."

7. In the aforesaid application dt.2.4.2014, filed today, it is stated as under :

> "In the above reference the parties abovenamed filed a Joint Application dated 13.3.2014 praying for disposal of the reference as the dispute no longer survives in view of Settlement dt.9.1.2014.
>
> As directed by this Hon'ble Court a copy of the said settlement is filed herewith."

8. From the joint statement made today before the Tribunal as well as from the averments made in the aforesaid applications, it is evident that the dispute which was referred to this Tribunal by the aforementioned Reference no longer survive.

9. In view of the above, the Reference is answered by stating that the dispute forming subject-matter of the Reference no longer survives.

10. Award is passed accordingly.

JUSTICE S. P. MEHROTRA, Presiding Officer

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